

or
Di

of
all
for
Ca
du
en
Ot
of
Do
Re
Qu
Mo
Es
Es

tio
of
sai
Ch

and

ties
of

CANADA,
PROVINCE OF QUEBEC,
District of Montreal,

In the Superior Court.

P375D-10

THE REVEREND ROBERT DOBIE,

Petitioner;

v's.

BOARD FOR THE MANAGEMENT OF THE TEMPORALITIES'
FUND OF THE PRESBYTERIAN CHURCH OF CANADA, IN
CONNECTION WITH THE CHURCH OF SCOTLAND, *et al.*,

Respondents.

To the Honourable the Superior Court for Lower Canada, District of Montreal, or to any one of the Honourable Justices of the said Court sitting in and for the District of Montreal.

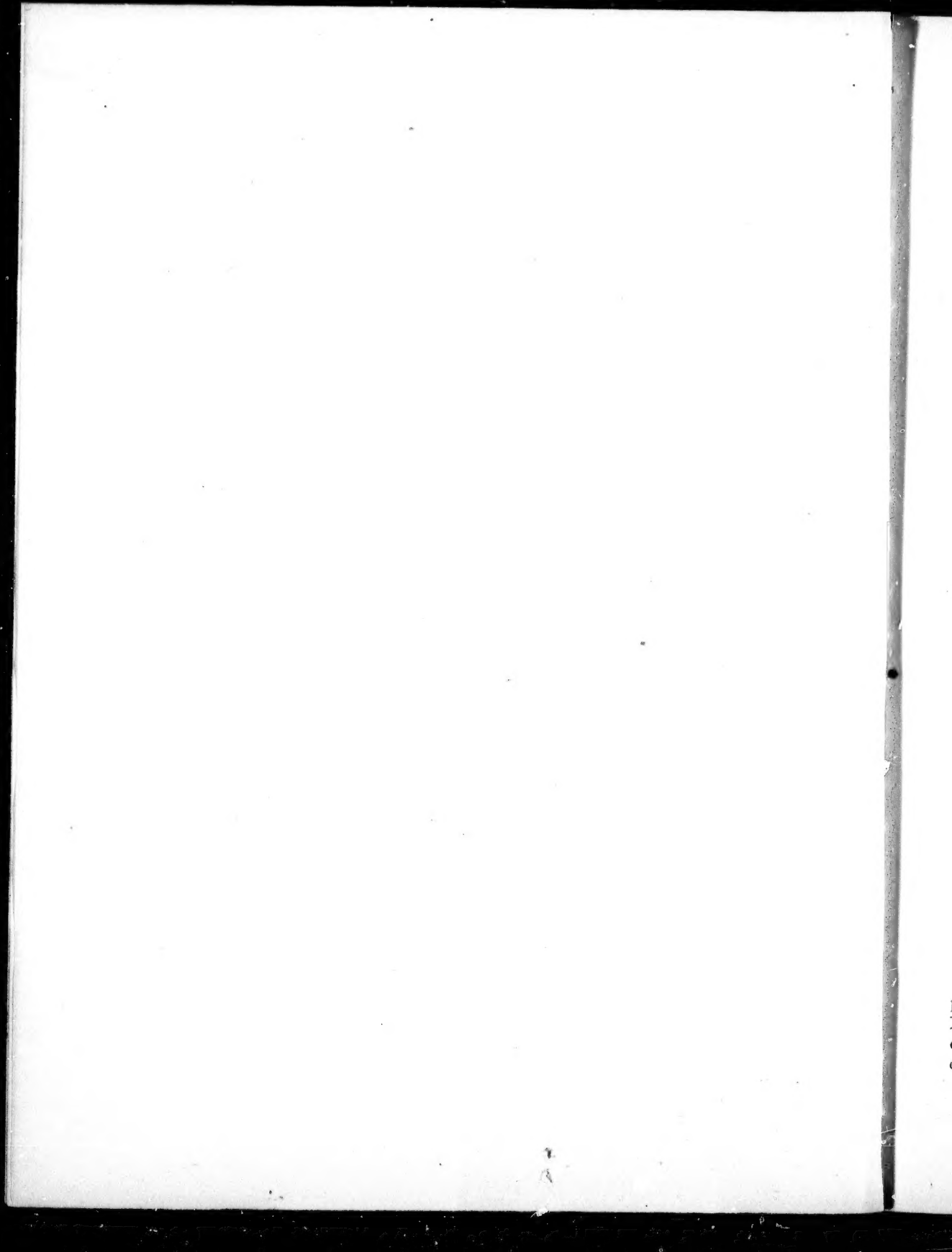
The humble Petition of the Reverend Robert Dobie, of Milton, in the County of Halton, in the Province of Ontario, and Dominion of Canada, Minister; personally, and in his qualities hereinafter mentioned, Petitioner, complains of the "Board for the Management of the Temporalities' Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," a body politic and corporate, duly incorporated, and having an office in the City of Montreal, and of the Reverend Daniel M. Gordon, Bachelor of Divinity, Minister of St. Andrew's Church of 10 Ottawa, Province of Ontario; Reverend John Cook, Doctor of Divinity, Minister of St. Andrew's Church, of Quebec, Province of Quebec; Reverend John Jenkins, Doctor of Divinity, Minister of St. Paul's Church, of Montreal, Province of Quebec; Reverend Gavin Lang, Minister of St. Andrew's Church, of Montreal, Province of Quebec; Sir Hugh Allan, of Ravenscraig, Montreal, Province of Quebec; John L. Morris, Esquire, Advocate, of Montreal, Province of Quebec; Robert Dennistoun, Esquire, County Judge of Peterborough, Province of Ontario; and William Walker, Esquire, Merchant, of Quebec, Province of Quebec, Respondents; and avers:

That Petitioner is a Minister of the Presbyterian Church of Canada in connection with the Church of Scotland, and a member of the Synod thereof and Minister 20 of the church and congregation designated "St. Andrew's Church" in Milton, aforesaid, in connection with and under the ecclesiastical jurisdiction of the Presbyterian Church of Canada, in connection with the Church of Scotland.

That said Petitioner is a Member and Minister of the Church of Scotland, and a Protestant Clergyman.

That the said Respondents, the Board for the Management of the Temporalities' Fund of the Presbyterian Church of Canada, in connection with the Church of Scotland, is a body politic and corporate, duly incorporated under a Statute of

May 1878



the heretofore Province of Canada, 22: Vic. Cap. 66; having an office in the city of Montreal, in the District of Montreal, in the Province of Quebec.

That, in the year eighteen hundred and fifty, Petitioner was duly licensed as a probationer and minister of the Church of Scotland by Law Established in that part of the United Kingdom of Great Britain and Ireland, called Scotland, and Petitioner came to the heretofore Province of Lower Canada, now the Province of Quebec, as an ordained missionary of the said Church of Scotland in the year eighteen hundred and fifty-two, and thereupon commenced and continued to labour and preach and teach as a missionary and minister of said last mentioned Church continuously in the said city of Montreal, until the year eighteen hundred and fifty-three.

That subsequently, on or about the seventh day of October, eighteen hundred and fifty-three, Petitioner, as a minister and missionary of the said Church of Scotland, removed from the said City of Montreal, and was admitted to and became a member of the Presbytery of Glengarry, in the now Province of Ontario, which said Presbytery was then and still is under the ecclesiastical jurisdiction of the Presbyterian Church of Canada, in connection with the Church of Scotland, and of the Synod of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and the Petitioner thereupon became a member and a minister of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and as such was duly appointed as minister and incumbent to the charge and pastorate of the Church and congregation in connection therewith, designated the Church and congregation of Osnabruck, situated in the Township of Osnabruck, in the County of Stormont, in the now Province of Ontario, then the section of the Province of Canada, known and designated as Upper Canada, and also as Canada West.

That since said last mentioned date, Petitioner has continued to be and to act as a minister of the said Presbyterian Church of Canada, in connection with the Church of Scotland, within the heretofore Province of Canada and within the Dominion of Canada, and has been at all times, and is now, as such, in good standing in the said Church and in the Synod thereof.

That the Petitioner, as a member and minister of the Church of Scotland, and as a member and minister of the Presbyterian Church of Canada, in connection with the Church of Scotland, and as a member of the Synod of the said last mentioned Church, and as a Protestant clergyman, since the date of the Petitioner's induction into the ministry as aforesaid, continuously unto the present time, became and was entitled to a share of and to a right of ownership in and to participate in the proceeds of certain lands of the Crown within the Provinces of Upper and Lower Canada, respectively, and in the rents, profits and emoluments derivable therefrom, as in the Acts and Enactments relating thereto declared.

That by Acts of the Imperial Parliament of Great Britain and of the Imperial Parliament of the United Kingdom of Great Britain and Ireland, the Sovereigns of Great Britain and of the United Kingdom of Great Britain and Ireland, were empowered to authorise the Governor, or Lieutenant Governor, of each of the then Provinces of Upper and Lower Canada, respectively, to make from out of the Lands of the Crown within said Provinces respectively, such allotment and appropriation of Lands as therein mentioned, for the support and maintenance of the Protestant

clergy within the said Provinces, and to apply the rents, profits and emoluments which might at any time arise from such Lands, so allotted and appropriated, solely for the maintenance and support of a Protestant clergy within the Province in which the same might be situated and to no other purpose whatever.

That subsequently thereto, in pursuance of the said Acts, certain Lands of the Crown were from time to time reserved for the purposes mentioned therein, which said lands were known, and were and are commonly designated by the name of the "Clergy Reserves."

That the Governor, Lieutenant-Governor, and Administrator of the heretofore Provinces of Upper and Lower Canada, respectively, were empowered with the consent of the Executive Council of such Provinces, respectively, and in pursuance of His Majesty's instructions, to sell and convey a part of the said "Clergy Reserves" in each of the said Provinces, and to invest the proceeds of such sales in the Public Funds of the said United Kingdom, and to appropriate the dividends and interests of the moneys so invested for the support and maintenance of a Protestant clergy within the said Provinces, solely and to no other purpose whatever.

That by another Imperial Act, the sale of the entire Clergy Reserves in the Province of Canada and the investment of the proceeds of such sale, and the distribution of the interests and dividends of such investment, subject to certain 20 conditions, were authorized for the purposes hereinbefore mentioned.

That by another Imperial Act the Legislature of the heretofore Province of Canada was authorised to dispose of said Clergy Reserves and to make such investment of the proceeds thereof as to the said Legislature might seem meet, subject to the proviso, that it should not be lawful for the said Legislature of the Province of Canada, by any Act or Acts thereof as aforesaid, to annul, suspend or reduce any of the annual Stipends which had, previously thereto, been already assigned and given to the clergy of the Churches of England and Scotland, or to any other religious bodies or denominations of Christians in Canada (to which the faith of the Crown was pledged) during the lives or incumbencies of the parties then 30 receiving the same, or to appropriate or apply to any other purpose, any part of the said proceeds, investments, interests, dividends, rents and profits that might be required for the payment of the stipends and allowances due or accruing to the Ministers and Missionaries of the said churches of England and Scotland during their lives or incumbencies.

That the Imperial Acts, to wit, the Acts of the Parliament of Great Britain and of the United Kingdom of Great Britain and Ireland hereinbefore referred to, the whole of which are herein invoked, are specifically referred to in the Act passed by the heretofore Province of Canada, in the eighteenth year of the reign of Her Majesty Queen Victoria, entitled, 18 Victoria, Chapter 2. 40

That under and by virtue of the said last mentioned Act, it was enacted and declared that the moneys arising from the sale and disposal of the said Clergy Reserves in the said Province of Upper Canada should continue to form a separate fund, which should be called the "Upper Canada Municipalities' Fund," and that the moneys arising from the sale and disposal of the Clergy Reserves in the said Province of Lower Canada should continue to form a separate fund, which should be called the "Lower Canada Municipalities' Fund," and that after deducting the

necessary expenses attending the sales of the said Clergy Reserves, and managing the same and the said Funds, the money forming the said Funds, or that had previously arisen therefrom, should be paid into the hands of the Receiver General of the heretofore Province of Canada, to be by him applied according to the purposes of the said last mentioned Act.

That by virtue of the said last mentioned Act, the annual stipend and allowance which had been, before the passing of the Act of Parliament of the United Kingdom, in the sixteenth year of Her Majesty's reign, assigned or given to the clergy of the Churches of England and of Scotland, or to any other religious bodies or denominations in either section of the Province, and chargeable¹⁰ under the said Act of Parliament on the Clergy Reserves in such section (and to which the faith of the crown was pledged) should, during the natural lives or incumbencies of the parties, (to wit, the Ministers and Missionaries of the said churches and religious denominations receiving the same at the time of the passing of the said Act, to wit, the Imperial Act 16 Vict.) be a first charge on the Municipalities' Fund for that section of the Province, and should be paid out of the same in preference to all other charges or expenses whatever.

That by the Act of the late Province of Canada (18 Vic: Cap. 2) it was enacted that the Governor of the said Province of Canada might, whenever he might deem it expedient, with the consent of the parties and bodies severally interested,²⁰ commute with the said parties such annual stipends or allowances for the value thereof, to be calculated at the rate of six per centum per annum upon the probable life of each individual, and that such commutation amount should be paid accordingly out of that Municipalities' Fund, upon which such stipend or allowance was made chargeable by the said last mentioned Act.

That under and by virtue of the said last mentioned Act, each of the Ministers and Missionaries of the Presbyterian Church of Canada in connection with the Church of Scotland, then receiving benefits within the said Province of Canada from the said Clergy Reserves, or from the proceeds thereof, or from the Municipalities' Funds within the respective sections of the said Province of Canada,³⁰ was entitled to receive a sum of money as commutation for the value of the annual stipend or allowance payable to him therefrom, and for the interest which he had individually, and as a member of the Presbyterian Church of Canada, in connection with the Church of Scotland, in the said Clergy Reserves and in the said Municipalities' Fund, arising therefrom.

That the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, was duly summoned for the purpose of taking such steps as might be necessary to enable the said Synod and the members thereof to take advantage of the commutation clauses in the said Act of the Legislature of Canada, 18 Vict. Cap. 2, and the said Synod duly met and determined and decreed as set⁴⁰ out in the minutes hereinafter cited, in the City of Montreal, on the tenth and eleventh days of January, eighteen hundred and fifty-five.

The following is a copy of the Proceedings of said Synod, extracted from its official records at pages three to eight of the Proceedings of Synod for eighteen hundred and fifty-five.

ACTS AND PROCEEDINGS

OF THE

Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, begun at Montreal the tenth day of January, and concluded the eleventh day of January, eighteen hundred and fifty-five years.

SESSION XXVI.

Diet I.

At Montreal, and within St. Andrew's Church there; Wednesday, the tenth day of January, one thousand eight hundred and fifty-five years.

The which day, after sermon by the Reverend Dr. Mathieson, from Psalm XLVIII. 12. 13: "Walk about Zion and go round about her, tell the towers thereof: mark ye well her bulwarks, consider her palaces, that ye may tell it to the generation following," the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, met, *pro re nata*, and was constituted with prayer by the Moderator, the Reverend James Williamson, A. M. Sederunt: Mr. James Williamson, *Moderator*; Mr. John McMurchy, Mr. John Barclay, Dr. Alexander Mathieson, Mr. James Anderson, Mr. James C. Muir, Dr. John Cook, Mr. William Simpson, Mr. Alexander Wallace, Dr. Robert McGill, Mr. James T. Paul, Mr. Thomas Haig, Mr. Archibald H. Milligan, Mr. John McDonald, Mr. John McKenzie, Mr. Hugh Urquhart, Mr. John McLaurin, Mr. Thomas McPherson, Mr. Eneas McLean, Mr. Donald Munro, Mr. Thomas Scott, Mr. Andrew Bell, Mr. Robert Dobie and Mr. John White, *Ministers*; together with Mr. Alexander Morris, Mr. John Thompson, Mr. Thomas A. Gibson, and the Hon. Thomas McKay, *Elders*.

The Moderator laid before the Synod a Requisition, which had been addressed to him, calling on him to summon a meeting of the Synod; also a copy of his circular calling the present meeting. The same were read, as follows:—

QUEBEC, 11th Dec., 1854.

Reverend and Dear Sir,

30

I beg to intimate to you that it is the opinion of the Committee of Synod, appointed to watch the progress of Legislation in respect of the Clergy Reserves, that the Bill introduced by Government, having now passed both Houses of the Legislature, it is desirable that a meeting of Synod should be called as early as possible for the purpose of taking such steps as may be necessary to take advantage of the commutation clause in said Bill, and in name of the Committee I beg very respectfully to request that you will call such meeting at the time and place you think most convenient.

I am, Reverend and Dear Sir,

Your faithful servant,

JOHN COOK.

40

t
c
s
i
C
C
th
s
th
w
m
in
co
th
to
m
le

sic

We, the undersigned, hereby concur in the necessity of calling a special meeting of Synod at the earliest period the forms of the Church will admit.

ALEX. MATHIESON,
ROBERT MCGILL.

The Reverend,
The Moderator of the Synod of the
Presbyterian Church of Canada,
in connection with the Church of Scotland.

KINGSTON, 20th December, 1854.

Reverend and Dear Sir,—

10

In compliance with a request addressed to me by the Convener and other members of the Committee appointed to watch over the progress of legislation in respect to the Clergy Reserves, to call a special meeting of Synod as early as possible for the purpose of taking such steps as may be necessary to take advantage of the Commutation clause in the Act which has lately been passed by the Provincial Parliament, I have now to intimate to you that a Special Meeting of Synod will be held in St. Andrew's Church, Montreal, on 10th January, 1855, being the second Wednesday of the month, at half-past six p.m.

I am, Reverend and Dear Sir,

Yours faithfully,

20

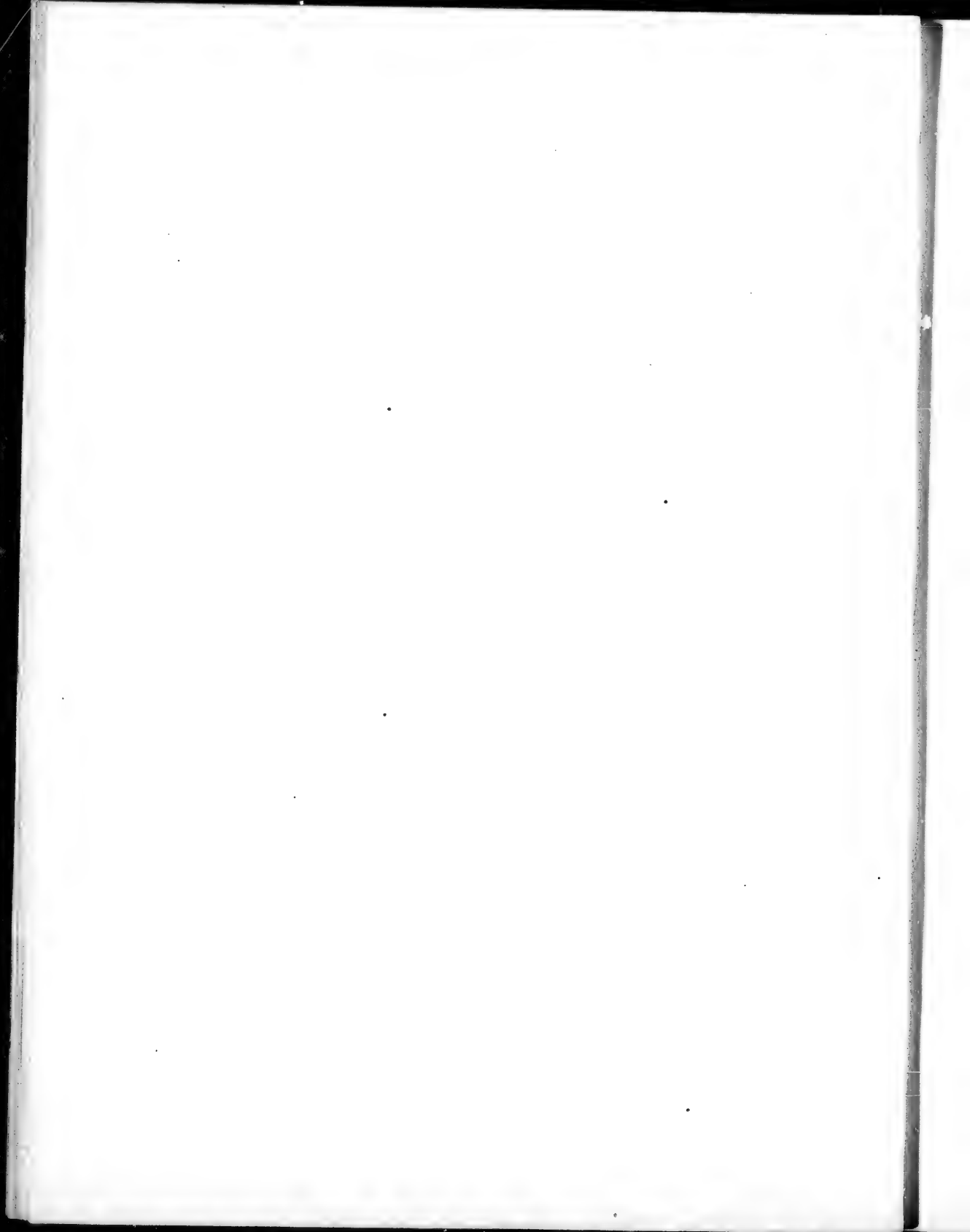
JAMES WILLIAMSON, *Moderator*.

P.S.—It has been thought by several of my brethren, with whom I have conferred on the subject, and I concur in the opinion, that in the circumstances of the case, Montreal is, on the whole, the most suitable place for the meeting of Synod on this occasion.

The Synod unanimously agreed to approve the Moderator's conduct in calling this meeting.

The Synod then called for the report of the Committee appointed to watch over the interests of the Church in regard to the Clergy Reserves, which was given in and read by Dr. Cook, the Convener, stating that the Bill for the Secular-30 ization of the Clergy Reserves, which had been introduced into Parliament by the Government, had been carried in both Houses, and assented to by the Governor-General:—that it contained a clause securing to all ministers settled previous to the 9th May, 1853, the date of the passage of the Imperial Act, payment of their salaries from the Clergy Reserve Fund during their lives or incumbencies, and at the same time authorizing the Government to commute the claims of incumbents, with the consent of the parties and bodies severally interested, and that the Committee, for reasons which they stated, had not considered it expedient to interfere in any way with the passing of the said Bill, but, feeling assured from many considerations that it would be for the benefit of the Church to take advantage of 40 the Commutation clause of the Act, the Committee had requested the Moderator to call a *pro re nata* meeting of Synod to take the matter into consideration, and make the necessary arrangements; and the Committee further, and at great length, recommended that the Synod should agree to commutation.

The Synod approved of the conduct of the Committee, and after some discussion, agreed to defer the further consideration of the report until to-morrow, and



instructed the aforesaid Committee to draft resolutions to be then laid before the Synod for their consideration as to their action in the matter.

The Synod agreed to spend a portion of time in the morning in devotional exercises.

The Synod then adjourned, to meet again at half-past eleven o'clock to-morrow forenoon, and was closed with prayer.

Diet II.

At Montreal, and within St. Andrew's Church there; Thursday, the eleventh day of January, one thousand eight hundred and fifty-five years:—

The which day, the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, met, according to adjournment, and was constituted with prayer.

On the call of the Moderator, the Rev. Dr. Cook conducted the devotional exercises of the Synod in praise, reading the scriptures, and prayer.

The minutes of yesterday were read and approved.

The clerk stated to the Synod, that he had received, a considerable time ago, a letter from the Inspector General's Department of the Government, requesting him to make a return, to be laid before Parliament, of all persons connected with this Church, "who at the date of the passing of the Act of the Imperial Parliament to make provision concerning the Clergy Reserves of this Province, viz: 9th May, 1853, were receiving any income or allowance from such portion of the proceeds of the Clergy Reserves as had been granted to the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, specifying the names and ages of such persons, the annual amounts of their allowance, and through whom it is paid;" and that he had immediately issued a circular to the several parties, requesting a statement of their ages, to be returned to him,—Mr. Allan, of Montreal, having kindly offered to furnish him with some other items;—but that he had been as yet unable to make the required return, in consequence of a considerable number of the ministers having neglected to make returns to him, although written to a second time on the subject; and that he had also, at the suggestion of some of the Clergy Reserve Commissioners, written to all of the parties whose names were on the Roll for salaries. The Synod, while approving of the conduct of the clerk, directed him to use all diligence in procuring as soon as possible, the whole of the required information, and in transmitting to the Government the list of incumbents up to 9th May, 1853, to furnish, at the same time, the names of those since put upon the roll as having, in the estimation of the Synod, claims upon the Fund.

The Committee, appointed yesterday to arrange measures for the consideration of the Synod, reported certain resolutions which the Synod proceeded to discuss at length.

The Synod, having heard the report of the committee appointed by the Synod to watch over the interests of the Church, in as far as these might be affected by the action of the Legislature on the Clergy Reserves, and, also, the verbal reports of such members of the committee as had been in communication with

members of the Government on the subject,—and, having seriously and maturely considered that clause of the Clergy Reserves Act, lately passed by the Provincial Parliament at its present session, by which His Excellency the Governor in Council is authorised, with the consent of the parties interested, to commute the salaries or allowances of ministers chargeable for life or during their incumbencies on the Clergy Reserves Fund, for their value in money,—Resolved,

“1st. That it is desirable that such commutation, if upon fair and liberal terms, should be effected; and that the Rev. Alex. Mathieon, D.D., of Montreal, the Rev. John Cook, D.D., of Quebec, Hugh Allan, Esq., of Montreal, John Thompson, Esq., of Quebec, and the Hon. Thomas McKay, of Ottawa City, be the Synod’s Commissioners, with full power to give the formal sanction of the Synod to such commutation as they shall approve, the said Commissioners being hereby instructed to use their best exertions to obtain as liberal terms as possible; the Rev. Dr. Cook to be Convener; three to be a quorum; the decision of the majority to be final, and their formal acts valid; but that such formal sanction of the Synod shall not be given except in the case of Ministers who have also individually given them, the said Commissioners, power and authority to act for them in the matter to grant acquittance to the Government for their claims to salary to which the faith of the Crown is pledged; and to join all sums so obtained into one Fund, which shall be held by them till the next meeting of Synod, by which all further regulations shall be made; the following, however, to be a fundamental principle which it shall not be competent for the Synod at any time to alter, unless with the consent of the Ministers granting such power and authority; that the interest of the fund shall be devoted, in the first instance, to the payment of £112 10s. each, and that the next claim to be settled, if the Fund shall admit, and as soon as it shall admit of it, to the £112, 10s., be that of the Ministers now on the Synod’s Roll, and who have been put on the Synod’s Roll since the 9th May, 1853; and, also, that it shall be considered a fundamental principle, that all persons who have a claim to such benefits, shall be Ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, and that they shall cease to have any claim on, or be entitled to any share of said commutation Fund whenever they shall cease to be Ministers in connection with the said Church.

“2nd. That so soon as said commutation shall have been decided upon, and agreed to by the said Commissioners, the Rev. John Cook, D.D., of Quebec, shall be fully empowered and authorised, and this Synod hereby delegate to the said Rev. Dr. John Cook full power and authority to endorse and assent to the several Powers of Attorney from the individual parties on behalf of the said Synod, and in their name, and as their Act and Deed, as evidencing their assent thereto.

“3rd. That all Ministers be, and they are hereby enjoined and entreated, (as to a measure by which, under Providence, not only their own present interests will be secured, but a permanent endowment for the maintenance and extension of religious ordinances in the Church) to grant such authority in the fullest manner, thankful to Almighty God that a way so easy, lies open to them for conferring so important a benefit on the Church.

“4th. That the aforesaid Commissioners be a Committee to take the necessary steps to get an Act of Incorporation for the Management of the General Fund,

t
e
in
th
o
fo
w
C

be
op
tic
se
in
wi
gr
ho
K
nee
the
W

the
ind
hea
the
test
civi
and
the
tude
in t
the
ed t
tran
to re

term
distr
to.

"so to be obtained; the aforesaid Commissioners to constitute the said Corporation till the next meeting of Synod, when four more members shall be added by the Synod."

The Synod ordered the minutes of this meeting to be printed, and a copy sent to each Minister as soon as possible, and they further instructed their Commissioners, named above, to address a circular to the several ministers, showing them the importance of commuting upon the plan agreed to at this meeting, and giving them full information on the subject.

The Synod requested their Moderator to convey to the Hon. John Hamilton, of Kingston, and the Hon. Thomas McKay, of Ottawa, the thanks of this Synod for the assistance afforded by them to the Clergy Reserve Committee of this Synod, when lately met at Quebec, and for their exertions on behalf of the interests of this Church, especially during the present session of Parliament.

The business for which the special meeting of Synod had been called, having been finished, the Reverend Dr. Mathieson stated "that he availed himself of the opportunity which this special meeting of Synod afforded, to direct the attention of the congregations within the bounds to the call made by the General Assembly of the Church of Scotland, and generously responded to by every parish in the land to contribute to the National Patriotic Fund for the relief of the wives and children of the brave men who have been disabled or found a soldier's grave in fighting for the honour of their country, and the liberty, and (it is to be hoped), the ultimate peace of the world, and the advancement of the Redeemer's Kingdom; and, also, to the circumstance, that several of the congregations in connection with this Synod have already contributed or were anxious to contribute their subscriptions through the channel thus afforded them, to the Patriotic Fund." Whereupon Dr. Mathieson moved to resolve, and it was resolved accordingly:

"That this Synod deeply sympathise with Her Majesty and her people in the great struggle, in which she has been constrained to engage, for the liberty and independence of nations. Sympathising also with the numerous families, whose hearts, in the inscrutable Providence of God, have been filled with sorrow for the loss of their natural protectors, or their friends who have fallen in the contest, and being deeply sensible of, and grateful for, the inestimable blessings, both civil and religious, which this colony enjoys, under Her Majesty's gracious sway, and its connection with the parent State, this Synod strongly recommend to all the congregations within their bounds, not only as an expression of their gratitude and sympathy, but as a solemn duty, at the earliest convenient season, and in the way that to the Minister and Elders seems best, to make contributions to the National Patriotic Fund:—and that Hew Ramsay, Esq., Montreal, be appointed to receive from the respective congregations their several contributions, and transmit them to William Young, Esquire, W.S., Edinburgh, who has been appointed to receive the contributions of the Church."

The Synod was then closed with prayer.

That the said proceedings of the said Synod are valid and binding; that the terms and conditions thereby established and declared, form the basis for the distribution and application of the said Fund, hereinbefore and hereinafter referred to.

That the sole business submitted at the meeting of the said Synod of the

a
c
b
in

"
"
"
"
"
"
"

" M
" P
" f
" g
" sl
" ea
" M
" si
" su
" ne
" th

" to
" Co
" rec
" wi
" Ma
" sal

Presbyterian Church of Canada, in connection with the Church of Scotland, at the diets thereof, held on the tenth and eleventh days of January, eighteen hundred and fifty-five, was the consideration of giving force and effect to the clause permitting the Governor of the then Province of Canada in Council to commute the claims of Ministers, Incumbents and Missionaries upon the Clergy Reserves Funds, with the consent of the bodies and parties severally interested, as set out in the minutes hereinbefore recited.

That the said Synod, on its own behalf and on behalf of its members, determined at its said meeting to take advantage of the said commutation clause, and appointed a committee, styled Commissioners, to give effect to the said determination, and the said Synod ordered said minutes to be printed, and instructed said Committee to send a copy thereof to each minister entitled to commute. 10

That the said Reverend John Cook, Doctor of Divinity, was appointed convener and Chairman of said Committee, and as such, was authorized to, and did, address a circular to all the then Ministers and Incumbents of the said Church entitled to benefits from the said Funds, among others to the Petitioner, which circular was in the following words:—

“ Quebec, 24th February, 1855.

“ Revd. Sir,

“ I am instructed by the Commutation Committee appointed at the last meeting of Synod, to enclose to you two Powers of Attorney, approved by the Government and by the Synod, which it is necessary you should sign and forward to Hugh Allan, Esq., Montreal, without delay,—in order to our obtaining a commutation of Clergy Reserve money, which will be advantageous to the Church. All the Ministers present at the meeting of Synod in January, agreed to commute, and the Ministers of the Church of England have unanimously signed similar powers to those now forwarded to you. 20

“ The fundamental conditions contained in the minutes of the Synod, held at Montreal, on the 11th January, 1855, which are alluded to in one of these powers, and which by the terms of the said minutes, it shall not be competent for the Synod at any time to alter, unless with the consent of the Ministers granting such power and authority,” are first, “That the interest of the Fund shall be devoted in the first instance, to the payment of salaries of £112 10s each,” to such Ministers, “ and that the next claim on the Fund shall be that of Ministers on the Roll of the Synod, and who have been put on the Synod’s Roll since the 9th May, 1853;” and, second, “That all persons who have a claim to such benefits, shall be Ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, and shall cease to have any claim, when they cease to be Ministers in connection with the said Church.” 30

“ Of these conditions it is presumed you will approve, and I have the satisfaction to inform you, that on the terms proposed by the Government, and to which the Commutation Committee are prepared to agree, as soon as these powers are received from the Ministers of the Church, it will be certainly possible to comply with the first condition, in so far as respects Ministers settled before the 9th May, 1853, and, preserving the capital, to secure to them, from the interest salaries of £112. 10s. for life, or incumbency. And it is, therefore, earnestly en- 40

"tr
"p
"p
"m
"b
"g
"c
"e
"d

"To

Chu
sion
the
their
pass
hund
to b
Chun

teres
Com
appr
divic
pass
hund

tion
Res
ninth
a stip
annu
in fav
hund
formi
of on
never
proce

T
said

"treated that there may be no hesitation or delay in signing and forwarding these powers.

"I am further instructed to call your attention to the following Resolution, passed unanimously, at the last meeting of Synod :—

"That all ministers be, and they are hereby enjoined and entreated, (as to a measure, by which, under Providence, not only their own private interests will be secured, but permanent endowment for the maintenance and extension of Religious ordinances in the Church,) to grant such authority as is necessary to effect a commutation, in the fullest manner, thankful to Almighty God, that a way so easy is open to them for conferring so important a benefit on the Church." Not doubting that you will concur in the views of the Synod,

"I am,

"Rev'd. Sir,

"Your obedient Servant.

(Signed)

JOHN COOK, *Convener.*"

"To the Reverend."—

That Petitioner and other Ministers and Incumbents of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and the Missionaries of the said Church of Scotland, renounced their individual rights in the said Fund, and authorised the said John Cook to act for each of them and in their behalf, for and by reason of the terms and conditions of the resolutions passed at the said meeting of Synod on the tenth and eleventh January, eighteen hundred and fifty-five, and more especially upon the consideration that the Fund to be created thereby would be a permanent endowment for the Presbyterian Church of Canada, in connection with the Church of Scotland.

That no change could be made in the distribution and application of the interest and revenues accruing on the said Fund received under the said Commutation Act, and the Acts therein referred to, without the full consent and approval of each and all of the commuting Ministers who renounced their individual interests therein, in consideration of the matters set out in the resolutions passed at the said meeting of Synod on the tenth and eleventh January, eighteen hundred and fifty-five.

That on and since the ninth of May, eighteen hundred and fifty-three, the Petitioner was entitled to the benefits derivable from the proceeds of the said Clergy Reserves under the said Imperial and Provincial acts relating thereto, and on the ninth day of May, eighteen hundred and fifty-three, Petitioner was in the receipt of a stipend and allowance therefrom amounting to upwards of one hundred pounds annually, and further at the date of the passing of the resolutions of the said Synod in favour of the said commutation, to wit, on the eleventh day of January, eighteen hundred and fifty five, the annual value of Petitioner's stipend and allowance, forming a life claim payable to him by and out of said sums, amounted to the sum of one hundred and fifty pounds currency per annum, and the said Petitioner has never done anything to forfeit his right to participate in the said Fund, or in the proceeds, profits or revenues thereof.

That during the year eighteen hundred and fifty-five, and after passing of the said resolutions by the said Synod, the said Petitioner did commute the claims

t
t
n
L
a
(
c
a
t

(2
fo
to
A
sa
co

due to him by the said Fund, with the Government, by and through the said Commissioners, upon the conditions set out in said resolutions, and the said Petitioner did thereby consent to renounce his personal rights in the said Clergy Reserves, and in the proceeds thereof in favour of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and did consent that the amount of the capital sum due and to accrue to him, should be joined with the amount due and to accrue to other Ministers of the said Church, and that all sums thus obtained should be joined into one fund, which should be held in Trust by the said Commissioners, in the said resolution named, till the meeting of the Synod next ensuing, by which all further regulations should be made, but the said renunciation of the Petitioner's rights was made subject to the fundamental principle (which it was declared not to be competent for the said Synod at any time to alter, unless with the consent of the Ministers granting such power and authority) namely, that the interest of the said Fund to be so created, should be devoted, in the first instance, to the payment of one hundred and twelve pounds, ten shillings, to each member then on the Synod Roll and who was on the Synod Roll on ninth May, eighteen hundred and fifty-three, and that the next claim to be settled, if the said fund should admit, and as soon as it should admit of it, to the one hundred and twelve pounds, ten shillings, be that of the Ministers whose names at the time of the passing of the said resolutions were on the said Synod Roll and which had been put on the said Synod's Roll since the ninth of May eighteen hundred and fifty-three, up to the date of the passing of the said resolution; and, also, upon the condition that it should be considered a fundamental principle that all persons who have a claim to such benefits should be ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, and that they should cease to have any claim on or to be entitled to any share of the said Commutation Fund whenever they should cease to be Ministers in connection with the said Church.

That the said Petitioner has always maintained his connection with the said Presbyterian Church of Canada, in connection with the Church of Scotland, and has done nothing to forfeit his rights and privileges therein. 30

That the funds placed in the hands of the said Commissioners, subject to the terms, conditions and fundamental principles of the said resolutions, to be held for the purpose, and subject to the restrictions herein mentioned, to wit, the funds resulting from the original Commutation claims of the Ministers upon the Clergy Reserves, exclusive of all other Contributions to it, amounted in eighteen hundred and fifty-five to the sum of One Hundred and Twenty-Seven Thousand Pounds, (£127,000) which said sum constituted, and was, and is, a Trust Fund, which could not be diverted from the purposes for which it was originally created, and the said Commissioners and their legal successors held the same in trust for the Presbyterian Church of Canada, in connection with the Church of Scotland. 40

That afterwards, an Act of the heretofore Parliament of Canada was passed (22 Vic., Cap. 66) to incorporate a Board for the management of the said Fund, and for such other funds as should be contributed, subscribed or paid in, from time to time, and that it was therein declared, at the time of the passing of the said Act, that said funds were held in trust by certain Commissioners on behalf of the said Church, and for the benefit of the said Presbyterian Church of Canada, in connection with the Church of Scotland.

re
a
C
o
f
t
(
a
C
t
V
se
“
“
fo
th
je
N
of
of

That at the time of such Commutation the funds arising therefrom, and which were constituted into one fund, amounted to the sum of One Hundred and Twenty-seven thousand Pounds, which it was declared, by a By-law passed under the provisions of the last mentioned Act, should be kept separate and distinct from any other funds which might come into the possession of the Board of Management of the Temporalities' Fund of the Presbyterian Church of Canada, in connection with the Church of Scotland.

That under the provisions of the said last mentioned Act, a body corporate and politic was created under the name of the "Board for the Management of the Temporalities' Fund of the Presbyterian Church of Canada, in connection with the Church of Scotland," to wit, the Corporation, Respondents, which said Board it was declared, among other things, should consist of twelve members, of whom five should be ministers and seven should be laymen, all being ministers or members in full communion with the said Church, and of whom seven should be a quorum; and that the said Board should thenceforth have, hold, possess and enjoy, in trust for the said Church (meaning the said Presbyterian Church of Canada, in connection with the Church of Scotland) and for the purposes in the said Act and in the preamble thereof mentioned, all moneys, debentures, bonds, bank or other stocks and securities which were then held by the Commissioners of the said Church, in Trust for the said Church, under the terms of the resolutions of the tenth and eleventh of January, eighteen hundred and fifty-five, hereinbefore cited, and subject to the conditions in the said Act mentioned.

That the said last mentioned Corporation continued to manage and administer the Trust Fund arising from the original commutation, and divers other funds contributed for the purposes mentioned in the said last mentioned Act, until the fifteenth day of June, eighteen hundred and seventy-five, when the aggregate amount of the funds, assets, and money under the control of the said last mentioned Corporation, Respondent, and by them held in trust for the Petitioner and for all others entitled to participate in the revenues and interests accruing thereon, and for the benefit of said Church, amounted to the sum of four hundred and sixty-three thousand, three hundred and seventy-one dollars and fifty-two cents, (\$463,371.52) at par value, according to statement dated first May, eighteen hundred and seventy-five, as set out in the Acts and Proceedings of the Synod of the said Church for eighteen hundred and seventy-five, at page forty-five of the Records thereof.

That an Act was passed by the Legislature of the Province of Quebec (38 Vic: Cap: 64) assented to on the twenty-third February, eighteen hundred and seventy-five, entitled an act to amend the act intituled "An Act to incorporate the Board for the management of the Temporalities' Fund of the Presbyterian Church of Canada, in connection with the Church of Scotland" and providing for the administration and distribution of the funds held and administered under the Act of the late Province of Canada (22 Vict: Cap: 66).

That the said Act of the Province of Quebec (38 Vic., Cap. 64) relates to subject matters beyond the competency of the Local Legislature under the British North America Act, 1867, to wit, the Act of the Parliament of the United Kingdom of Great Britain and Ireland, (30th and 31st Vic., Cap. 3), and the Legislature of the Province of Quebec was incompetent to pass said Act; and the said Act of

re
w
tre
me
wh
for
Vi
the

the Province of Quebec, in so far as it derogates from, or purports to modify or vary the Act 22 Vic., Cap. 66, of the heretofore Province of Canada, is null and of no effect.

That the subject matters of said Act of the Legislature of Quebec are not of a mere local or private nature within the Province of Quebec, but affect the rights of persons residing beyond the Province of Quebec, and not subject to its jurisdiction.

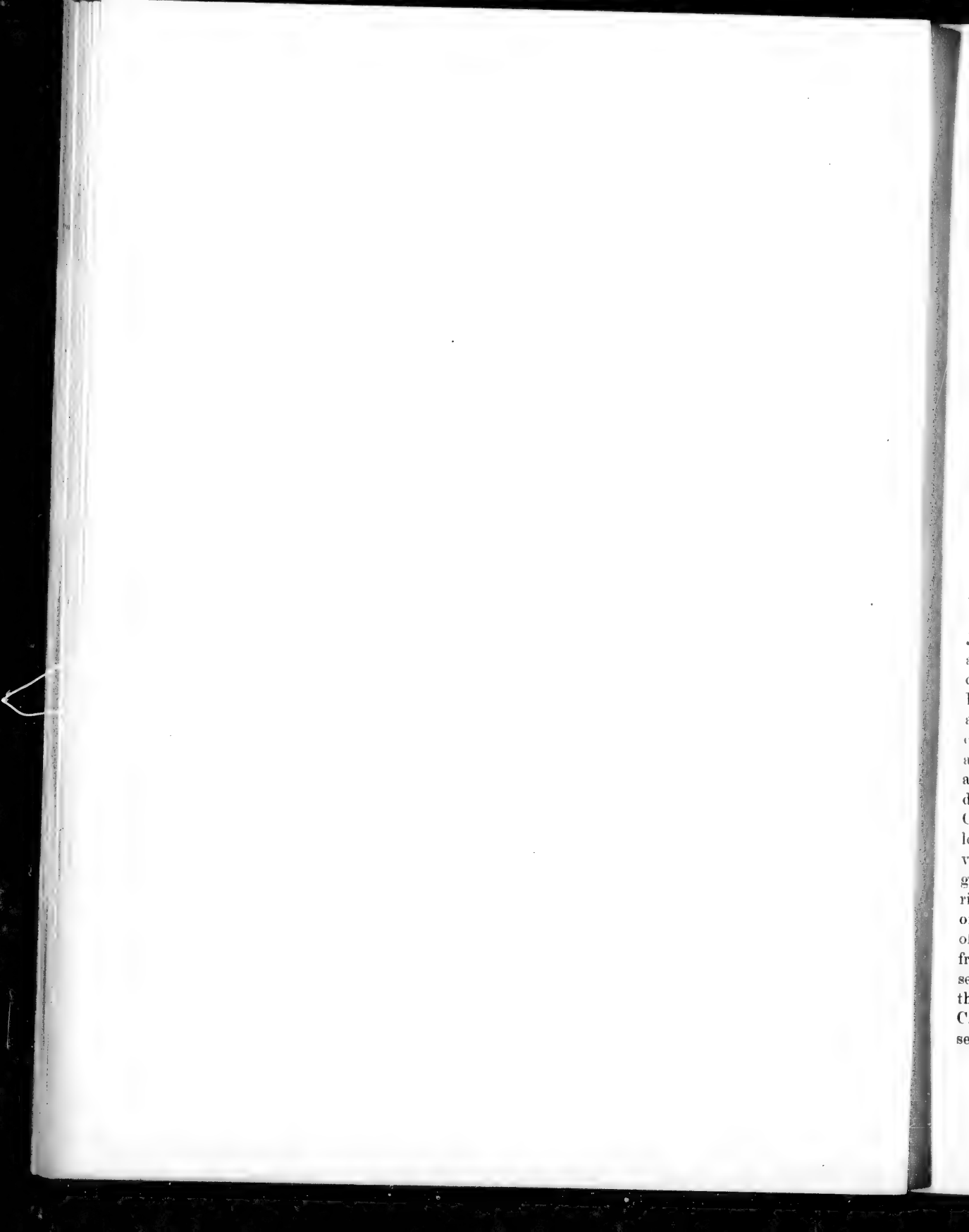
That the Petitioner is not subject to the legislation of the said Province of Quebec affecting his interests in the said funds, and the said Legislature of said Province of Quebec has exceeded its competency and jurisdiction in passing 10 said Act.

That the interests of the Petitioner in the moneys arising from the said commutations and in the Temporalities' Fund, as constituted by the Act (22 Vic., Chap. 66) of the late Province of Canada, are not of a mere local or private nature in the Province of Quebec, but are a matter of general interest.

That the objects of the Corporation, Respondents, under the Act 22 Vic., Cap. 66, of the heretofore Province of Canada, were not, and are not, of a provincial nature, but extend to persons residing in the Provinces of Ontario and Quebec.

That the said Act of the Legislature of the Province of Quebec is illegal and unconstitutional, and beyond the competency of the said Legislature. 20

That the said Act of the Legislature of the Province of Quebec (38 Vic., Cap. 64) is further illegal and unconstitutional, in permitting and providing for the payment of an annual stipend to ministers who have ceased to be members of, or to have any connection with the Presbyterian Church of Canada, in connection with the Church of Scotland; and in providing that the Temporalities' Board, to wit, the Corporation, Respondents, should, if necessary, draw upon the capital fund, to wit, the Temporalities' Fund, in order to provide for the payment of the stipends and salaries to ministers, as mentioned in the said last mentioned Act, and in providing that: "As often as any vacancy in the Board for the
"management of the said Temporalities' Fund occurs by death, resignation or 30
"otherwise, the beneficiaries entitled to the benefit of the said Fund may each
"nominate a person, being a minister or member of the said United Church; or in the
"event of there being more than one vacancy, then one person for each vacancy and
"the remanent members of the said Board, shall thereupon from among the persons
"so nominated as aforesaid, elect the person or number of persons necessary to fill such
"vacancy or vacancies, selecting the person or persons who may be nominated by the
"largest number of beneficiaries to nominate as aforesaid, the remanent members of
"the Board shall fill up the vacancy, or vacancies, from among the Ministers, or
"members of the said United Church," thus depriving a Minister who may have
retained his connection with the Presbyterian Church of Canada, in connection 40
with the Church of Scotland, of the right to administer the funds under the control of the said Corporation, Respondents, and disfranchising and disqualifying all members of the said last mentioned Church from administering the said Fund which, of right, alone belongs to them; and further in setting aside the legal method for filling vacancies in the Board, Respondents, as prescribed by the said Act 22, Victoria, Chapter 66, and the By-Laws made thereunder. That the said Statute of the late Province of Canada, (22 Vic.: Cap. 66) is legally and constitutionally in



full force and effect, and the Respondents are subject to its provisions, and the By-Laws made thereunder by the said Presbyterian Church of Canada, in connection with the Church of Scotland, previous to the fourteenth day of June, eighteen hundred and seventy-five, and by those members, Ministers, and Elders of the said last mentioned Church, who remained in connection therewith, and who have not seceded therefrom on and since the fifteenth day of June, eighteen hundred and seventy-five are now in full force.

That the said Respondents have no power to apply the capital sum of one hundred and twenty-seven thousand pounds, or the sum administered by them, to the payment of stipends or to any other purpose whatever, but the said sum and such 10 other sums as should be contributed to it were intended to remain intact as a permanent endowment for the said Presbyterian Church of Canada, in connection with the Church of Scotland : as fully appears from the Minutes and the Synod letter of the Reverend John Cook hereinbefore cited, under the express provisions of both which the Petitioner surrendered his interests in the Clergy Reserves and their proceeds to the said Church.

That the said Respondents had power only to use and apply the revenues, interests and accruals of the said Endowment Fund, for the purposes mentioned in the said Act incorporating the Board, Respondents.

That the Corporation, Respondents, since the fifteenth day of June, eighteen 20 hundred and seventy-five, up to the month of December, eighteen hundred and seventy-seven, have drawn upon the capital of the said Fund to the extent of the sum of forty thousand five hundred dollars and twenty-five cents, (\$40,500.25), illegally and in contravention of the said Act (22 Victoria, Chapter 66) of the heretofore Province of Canada.

That the Reverend John Cook, Doctor of Divinity, of Quebec, the Reverend James C. Muir, Doctor of Divinity, of North Georgetown, in the Province of Quebec, and the Rev. George Bell, Doctor of Laws, (LL.D.), of Walkerton, in the Province of Ontario, were commutators, and did commute their claims, upon the said Clergy Reserves, and upon the funds arising therefrom, concurrently with the Petitioner, 30 and under and subject to the terms of the fundamental principles hereinbefore cited, passed by the said Synod on the eleventh day of January, eighteen hundred and fifty-five, but on and since the said fifteenth day of June, eighteen hundred and seventy-five, the said Reverends John Cook, James C. Muir, and George Bell, did join with another religious association called the Presbyterian Church in Canada, composed of persons who previous to the said fifteenth day of June, belonged to four separate and distinct religious organizations, and extending over various provinces of the Dominion, under four separate and distinct ecclesiastical governments, entirely unconnected with each other, to wit, the Canada Presbyte- 40 rian Church, the Presbyterian Church of Canada, in connection with the Church of Scotland, the Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces, several members from each of which said last mentioned religious organizations united themselves together in a new and distinct religious organization and association called the Presbyterian Church in Canada :—that the said Reverends John Cook, James C. Muir and George Bell, on said fifteenth day of June, eighteen hundred and seventy-five, ceased to be Ministers thenceforward of the Presbyterian Church of

C
t
Y
t
n
C
a
t
k
s
a
o
p
R
fr
h
b
C
se
M
be
te

Canada, in connection with the Church of Scotland ; and Petitioner avers that said Reverends John Cook, James C. Muir and George Bell, have not been entitled to receive any benefits from the said Fund, or to be paid any sums of money by the Corporation, Respondents, by reason of their having seceded from, and ceased to be Ministers of the said Presbyterian Church of Canada, in connection with the Church of Scotland.

That since the said fifteenth day of June, eighteen hundred and seventy-five, the said Corporation Respondents, have paid to the said Reverend John Cook, the sum of nine hundred dollars ; to the said Reverend James C. Muir, the sum of nine hundred dollars : to the said Reverend George Bell, the sum of nine hundred 10 dollars ; out of the said Fund, and the interest and revenues thereof, for Commutation Allowances by the said Corporation, Respondents, alleged to have accrued on said Fund since the said fifteenth day of June, eighteen hundred and seventy-five, in favour of the said Reverends John Cook, James C. Muir, and George Bell, in their quality as members of the Presbyterian Church of Canada, in connection with the Church of Scotland ; though since the said fifteenth day of June, eighteen hundred and seventy-five, the said Reverends John Cook, James C. Muir, and George Bell, have been and are ministers of the said new organization, styled the Presbyterian Church in Canada.

That Petitioner has reason to believe and verily believes, that the Corporation, 20 Respondents, will pay to the said Reverends John Cook, James C. Muir, and George Bell, the sum of two hundred and twenty-five dollars each, on or before the first day of July next, as Commutation Allowances from the said Fund, to each of the said last mentioned Ministers, in their quality as Ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, for the half year ending thirtieth June, eighteen hundred and seventy-eight.

That preceding the fifteenth day of June, eighteen hundred and seventy-five, the Reverend John Fairlie, minister of L'Orignal, Province of Ontario, the Reverend David W. Morison, Bachelor of Arts, Minister of Ormstown, Province of Quebec, the Reverend Charles A. Tanner, of Richmond, Province of Quebec, 30 amongst others, not being of the number of original commutators, were not entitled to receive any allowance or stipend or revenue or emolument of any nature or kind from said Fund administered by said Respondents, under the terms of said statute 22 Vic., Cap. 66, unless the interest, revenues and accruals on said Fund, and contributions from other sources thereto, were sufficient to allow the payment of certain allowances or emoluments therefrom after the deduction of the sums payable to the original commutators.

That the said Reverend John Fairlie, Reverend David W. Morison, and Reverend Charles A. Tanner, of Richmond, Province of Quebec, have received 40 from said Corporation, Respondents, since the fifteenth day of June, eighteen hundred and seventy-five, for, and by reason of their connection with and having been Ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, since the said fifteenth day of June, eighteen hundred and seventy-five, the sum of Four Hundred Dollars each, to which said last mentioned Ministers were not entitled, both by reason of having ceased to be entitled to the benefits from the Fund administered by said Corporation, Respondents, under the terms of the resolution of the eleventh of January, eighteen hundred and fifty-

I
J
M
F
M
E

R
sh

m
B
R

in

five, the said Reverends John Fairlie, David W. Morison and Charles A. Tanner having ceased to be members of the Presbyterian Church of Canada, in connection with the Church of Scotland, and having joined the said Presbyterian Church in Canada as aforesaid, and because the revenues and interests accruing on said Fund administered by said Corporation, Respondents, were not sufficient to pay the said Reverends John Fairlie, David W. Morison, and Charles A. Tanner, any allowance or emolument whatever, after the payment and settlement of all legal claims upon the revenues of said fund, and said Reverends John Fairlie, David W. Morison, and Charles A. Tanner, were not entitled, respectively, to said sums of Four Hundred Dollars each, either from the revenues and interest or from the capital of 10 said Fund so administered, as aforesaid, by the Corporation, Respondents.

That by the terms of the said Statute (22 Vic., Cap. 66), incorporating the Corporation, Respondents, it is provided that at the first meeting of the Synod of the said Church there should be elected, by the said Synod, seven members of the said Board, Respondents, of whom four should be laymen and three ministers, all members of the Presbyterian Church of Canada, in connection with the Church of Scotland, in place of two laymen and one minister, members of the said Board, who should then retire, and that thereafter two ministers and two laymen should retire from the said Board annually, in rotation, on the third day of the annual meeting of the said Synod, and that the place of the retiring members of the said Board, 20 Respondents, should be supplied by two ministers and two laymen, being ministers or members in full communion of the said Church, then to be elected by the said Synod.

That on the fourteenth day of June, eighteen hundred and seventy-five, the following persons composed the duly-elected, eligible members of the said Board, Respondents, entitled to administer the funds and property entrusted to them under the provisions of the said Act, as appears by the Acts and proceedings of the said Synod for the year eighteen hundred and seventy-five:—

Reverend John H. Mackerras, Master of Arts, Professor in Queen's College, Kingston, Province of Ontario, the said Reverend Daniel M. Gordon, Reverend 30 John Cook, D.D., Reverend John Jenkins, D.D., Reverend Gavin Lang, James Michie, Esquire, Merchant, Toronto, Province of Ontario; Alexander Mitchell, Esquire, Merchant, Montreal, Province of Quebec; William Darling, Esquire, Merchant, Montreal, Province of Quebec; the said Sir Hugh Allan, John L. Morris, Esquire, Robert Dennistoun, Esquire, and William Walker, Esquire.

That since the date of the said enactment, incorporating the Corporation, Respondents, (22 Vic., Cap. 66), four members of the said Board, Respondents, should have retired therefrom at each annual meeting of the said Synod.

That in the month of June, eighteen hundred and seventy-six, the following members of the said Board, Respondents, by law ceased to be members of said 40 Board, and should have retired therefrom, to wit, the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, and Robert Dennistoun, Esquire.

That in the month of June, eighteen hundred and seventy-seven, the following members of the said Board by-law ceased to be members of said Board, Res-

1
 2
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525

the
in
th
av
Jo
to
A
de
In
sa
Re
sa
po
ou
an
de
cor
Ca

pondents, and should have retired therefrom, to wit: The said Reverend John Cook, Reverend Daniel M. Gordon, John L. Morris, Esquire, and Sir Hugh Allan.

That the remaining members of the Board, to wit: the said Reverend John H. Mackerras, James Michie, Esquire, Alexander Mitchell, Esquire, and William Darling, Esquire, have seceded from the said Presbyterian Church of Canada, in connection with the Church of Scotland, and have joined the said Presbyterian Church in Canada, and have ceased to be members of the Presbyterian Church of Canada, in connection with the Church of Scotland, and have *ipso facto* vacated their seats as members of the Board, Respondents, and the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun,¹⁰ Esquire, Reverend John Cook, Reverend Daniel M. Gordon, John L. Morris, Esquire, and Sir Hugh Allan, heretofore members of the said Board, were not legally re-elected and appointed members of the said Board, Respondents, and they and the remaining members of the said Board illegally pretend to exercise, and do in fact exercise and perform all the functions appertaining to legally elected and appointed members of the said Board.

That the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, John L. Morris, Esquire, and Sir Hugh Allan, Reverend John H. Mackerras, James Michie, Esquire, Alexander Mitchell, Esquire, and William²⁰ Darling, Esquire, are not entitled to administer the said Fund, or to be or remain as members of the Corporation, Respondents, and should be removed from the said Board, and the said Respondents are not entitled further to administer the funds under the control of the Corporation, Respondents, or to make any infringement upon the capital thereof, or to disburse the revenues thereof in any manner whatever, the said Board being illegally constituted.

That the said Corporation, Respondents, have infringed upon the capital of the said Fund under their management and control in the manner hereinbefore indicated, and have illegally paid money, proceeds of the capital and revenues of the said Fund, in the manner hereinbefore indicated, without any legal power or³⁰ authority so to do, and have illegally continued and permitted the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, and John L. Morris, Esquire, to act as members of the said Board, Respondents, without having fulfilled the formalities prescribed by law and the Act of Incorporation of the Corporation, Respondents, for their election as members of the said Board, and all the members now comprising the Board of the Corporation Respondents, are illegally exercising the power of legally elected members, and the said Corporation, Respondents, composed as aforesaid, are now acting beyond their power in continuing the exercise of the powers conferred on the said Board with-⁴⁰ out having a *quorum* of the said Board duly elected as members of the said Board, and by permitting the said parties, not being members thereof, to take part in the deliberations and proceedings thereof, and by administering the funds under their control illegally and contrary to the terms of the Act of the heretofore Province of Canada, incorporating the Board, to wit: 22 Vic., cap. 66.

n
o
c
th
b
R
an
te
ne
w
th
pa
Be
ac

be
fi
co
Vi
the
ult
be

wh
Re
De
All
thi
be
the
pov
Act
me
elec
Act
bur
not
hol
the
saic
Ince
Boa
Rev

That the Corporation, Respondents, have hitherto made the half-yearly payments of Ministers' allowances from said Fund about one month before the day on which such payments to Ministers would become due, to those entitled to receive same, and the Corporation, Respondents, as Petitioner believes, will issue cheques for the pretended allowances herein about the beginning of June next.

That the said Petitioner has a personal interest in the Funds administered by the Respondents and more especially in that portion of the Funds so administered by them arising from the Commutation of claims of Ministers upon the Clergy Reserves and the proceeds thereof, and the said Petitioner has a right to allowances therefrom for life, provided he maintains his connection with the Presbyterian Church of Canada, in connection with the Church of Scotland, and does not cease to be a Minister in connection therewith, which said allowances and which said interest in the said Funds are endangered by the infringement upon the capital of the said Fund, made by the Board Respondents and by the illegal payments hereinbefore indicated or made or that may hereafter be made by the Board Respondents, out of the capital of the said Fund or the interest or revenues accruing thereon.

That all the payments heretofore made by Respondents to the persons hereinbefore mentioned, since the fifteenth day of June, eighteen hundred and seventy-five, or contemplated to be made out of the said Fund, as hereinbefore stated, are contrary to the provisions of the Statute of the heretofore Province of Canada, 22 Vic., Chap. 66, and in so far as they may be ostensibly authorised by the Acts of the Parliament of Quebec, or of any of them, are illegal and unconstitutional, and *ultra vires* of the Corporation, Respondents, as Petitioner is advised and verily believes.

Wherefore the said Petitioner, personally and in his said qualities, prays that a writ of injunction may issue against the said Corporation, and against the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, John L. Morris, Esquire, enjoining them and each of them to appear before this Honourable Court, or a Judge thereof, to answer the present petition; that it be declared and adjudged, by the judgment to be rendered upon this petition, that the said Corporation, Respondents, are acting and taking proceedings beyond their power, and without having fulfilled the formalities prescribed by law, and by the Act of Incorporation thereof, by permitting the said last-named persons to act as members of the said Board and of the said Corporation, without having been elected as members of such Board in the manner provided by law and by the said Act of Incorporation, and, further, by administering, intermeddling with and disbursing the funds and property of the said Corporation in a manner and for purposes not authorized by the said Act of Incorporation of the 22nd Vic., Chap. 66; and by holding, administering, dispensing, and disposing of the funds and property of the said Corporation, without having a sufficient number of members of the said Corporation elected in the manner provided by law, and in the Act of Incorporation thereof, to constitute a quorum of the said Corporation or of the said Board. And that it be further thereby adjudged and declared that the said Rev. John Jenkins, Rev. Gavin Lang, William Walker, Esquire, Robert Dennis-

1
1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

1

toun, Esquire, Rev. John Cook, Rev. Daniel M. Gordon, Sir Hugh Allan, and John L. Morris, Esquire, have no right or authority to sit, deliberate, or act as members of the said Corporation or Board, and thereupon further prays that the said Corporation be by such judgment restrained from acting and proceeding in respect of the duties imposed upon them by the said Act of Incorporation of the 22 Vic. chap. 66, and from administering, using, dispensing, or disposing of the funds and property of the said Corporation; and be ordered and enjoined not to act in respect of the said duties and powers, and in respect of the said funds and property, until an adequate and sufficient number of members thereof, shall have been duly elected in the manner and with the formalities provided by law and by the said last mentioned Act of Incorporation. 10

And further, that the Respondents, Rev. John Jenkins, Rev. Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Rev. John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, and John L. Morris, Esquire, be restrained from acting as members of the said Board, and be enjoined not to sit or act as, or perform any of the functions of members of the said Board, unless and until they shall be duly elected members thereof, in the manner, and with the formalities provided by the said Act of Incorporation of the said Board, 22 Vic. chap. 66.

And the Petitioner further prays, that it be ordered, that the said Respondents, and each and all of them do forthwith suspend any and all acts and proceedings 20 in their several capacities respectively; in respect of the administration of the said funds and property, and in respect of all matters in dispute in this cause.

That it be adjudged and declared that the Fund administered by the Corporation, Respondents, amounting to the sum of four hundred and sixty-three thousand, three hundred and seventy-one dollars and fifty-two cents, (\$463,371.52) is a Fund held in Trust by them for the benefit of the Presbyterian Church of Canada, in connection with the Church of Scotland, and for the benefit of the Ministers and Missionaries who retain their connection therewith and who have not ceased to be Ministers thereof, and for no other purpose whatever.

That the said Reverend John Cook, Reverend James C. Muir and Reverend 30 George Bell, be declared to have ceased to be Members of the Presbyterian Church of Canada, in connection with the Church of Scotland, and not to be entitled to any sum of money or benefit from the funds administered by Respondents. That the said Reverend John Fairlie, Reverend David W. Morison and Reverend Charles A. Tanner be declared not entitled to receive any sum of money whatever from the funds administered by Respondents, and that Respondents be enjoined and ordered not to pay said Rev. John Cook, Rev. James C. Muir, Reverend George Bell, Rev. John Fairlie, Rev. David W. Morison and Reverend Charles A. Tanner, or any of them, any sum of money whatever from the capital or revenues of the funds administered by them, and further, that the said Corporation, Respondents, 40 be adjudged and ordered not to pay to them the said Reverend John Cook, Reverend James C. Muir, Reverend George Bell, Reverend John Fairlie, Reverend David W. Morison, Reverend Charles A. Tanner, or to any other person whomsoever, any sum of money whatever out of the capital or revenues or interest accrued and to accrue on said Fund, under pain of all legal penalties, until such further order shall be made upon the said petition, as to this Honourable Court, or any

C
t
C
t
r
r
L
V
I
f
r
i
a
a

Judge thereof shall seem meet and expedient, the said Petitioner reserving the right to take such other and further conclusions in the matter, as he may be advised and permitted, the whole with costs, against such of said Defendants as may contest the present action, but without costs against such of the Defendants as may declare that they abide the order of the Court, of which costs the undersigned Attorneys pray distraction.

Montreal, 30th April, 1878.

MACMASTER, HALL & GREENSHIELDS,

Attorneys for Petitioner.

HON. J. J. C. ABBOTT, Q. C.,

Counsel.

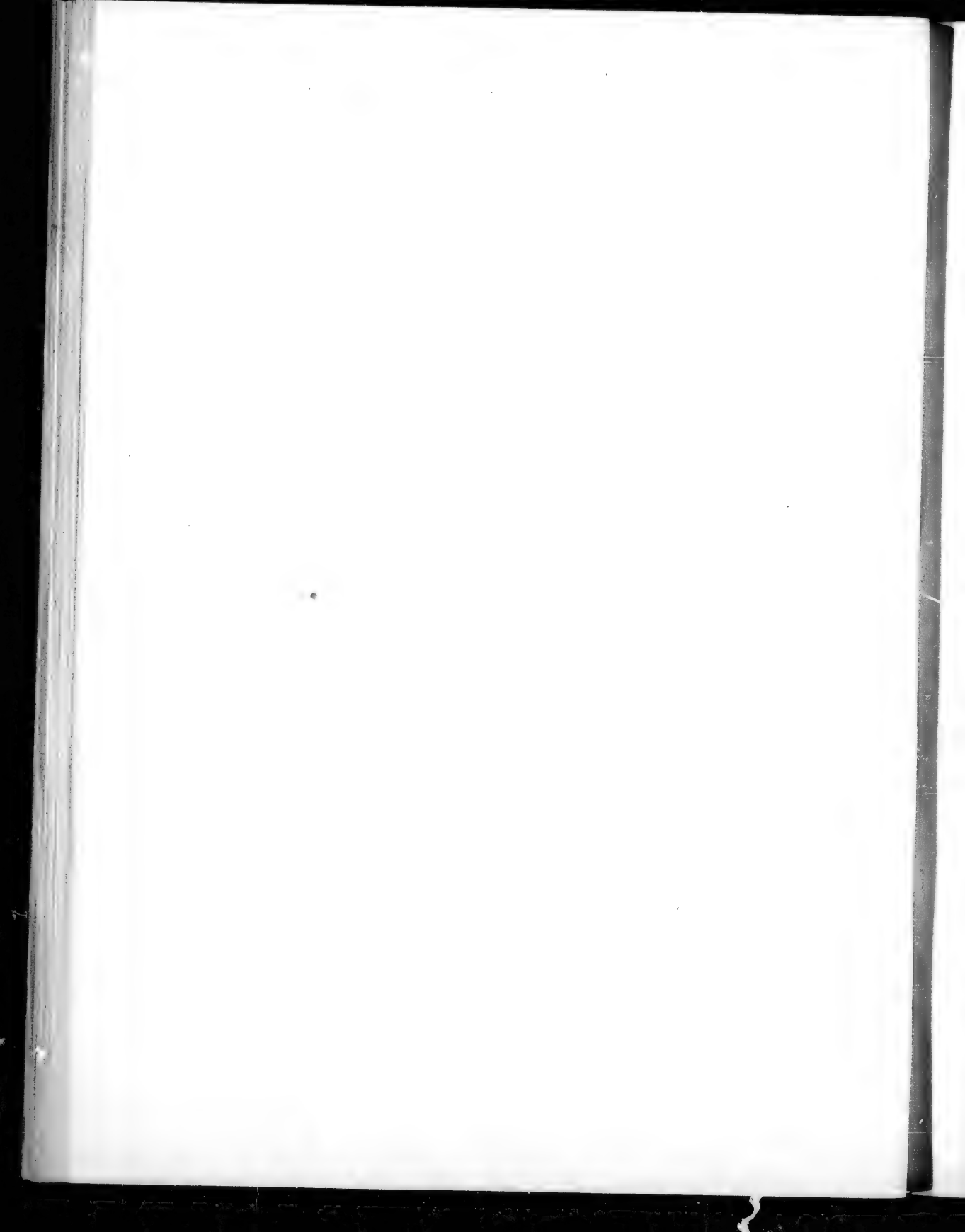
I, the undersigned, one of the Justices of the Superior Court for Lower Canada, sitting in the District of Montreal, having read the foregoing Petition, and the affidavits and documentary evidence produced in support of the same, do order that a Writ of Injunction do issue according to the prayer of the said Petition, to summon the Respondents to be and appear before any one of the Honourable Justices of the said Superior Court at Montreal aforesaid, on the 4th day of July next, to answer the premises, and pending such further order and judgment as may be rendered in this cause, I do hereby order and enjoin the said Corporation, Respondents, and the said Respondents, the Rev. John Jenkins, Rev. Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Rev. John Cook, Rev. Daniel M. Gordon, Sir Hugh Allan, and John L. Morris, Esquire, and each of them forthwith, to suspend any and all acts and proceedings in their several capacities, respectively, in respect of the payment of all sums of money, and of the administration of the funds under the control of the said Corporation, Respondents, and in respect of all other matters in dispute in this cause, under pain of all penalties provided by law.

Montreal, 14 May, 1878.

(Signed,)

H. F. RAINVILLE,

J. S. C.



No.

In the Superior Court,
MONTREAL.

THE REVEREND ROBERT DOBIE,

Petitioner :

vs.

BOARD FOR THE MANAGEMENT OF THE TEMPORALITIES' FUND OF THE PRESBYTERIAN CHURCH
OF CANADA, IN CONNECTION WITH THE
CHURCH OF SCOTLAND, *et al.*,

Respondents.

PETITION.

MACMASTER, HALL & GREENSHIELDS,

Attorneys for Petitioner.

HON. J. J. C. ABBOTT, Q. C.,

Counsel.

CANADA,
PROVINCE OF QUEBEC,
District of Montreal.

P375D- 11
In the Superior Court.

THE REVEREND ROBERT DOBIE,

Petitioner:

vs.

BOARD FOR THE MANAGEMENT OF THE TEMPORALITIES'
FUND OF THE PRESBYTERIAN CHURCH OF CANADA, IN
CONNECTION WITH THE CHURCH OF SCOTLAND, *et al.*,

Respondents.

To the Honourable the Superior Court for Lower Canada, District of Montreal, or to any one of the Honourable Justices of the said Court sitting, in and for the District of Montreal.

The humble Petition of the Reverend Robert Dobie, of Milton, in the County of Halton, in the Province of Ontario, and Dominion of Canada, Minister; personally, and in his qualities hereinafter mentioned, Petitioner, complains of the "Board for the Management of the Temporalities' Fund of the Presbyterian Church of Canada, in connection with the Church of Scotland," a body politic and corporate, duly incorporated, and having an office and its principal place of business in the City of Montreal, and of the Reverend Daniel M. Gordon, Bachelor of Divinity, 10 Minister of St. Andrew's Church of Ottawa, Province of Ontario; Reverend John Cook, Doctor of Divinity, Minister of St. Andrew's Church, of Quebec, Province of Quebec; Reverend John Jenkins, Doctor of Divinity, Minister of St. Paul's Church, of Montreal, Province of Quebec; Reverend Gavin Lang, Minister of St. Andrew's Church, of Montreal, Province of Quebec; Sir Hugh Allan, of Ravenscraig, Montreal, Province of Quebec; John L. Morris, Esquire, Advocate, of Montreal, Province of Quebec; Robert Dennistoun, Esquire, County Judge, of Peterborough, Province of Ontario; and William Walker, Esquire, Merchant, of Quebec, Province of Quebec; the Reverend John H. Mackerras, of Kingston, in the Province of Ontario; William Darling, Esquire, and Alexander Mitchell, both Merchants of the City of Montreal, 20 aforesaid, Respondents; and avers:

That Petitioner is a Minister of the Presbyterian Church of Canada in connection with the Church of Scotland, and a member of the Synod thereof and Minister of the Church and Congregation designated "St. Andrew's Church" in Milton, aforesaid, in connection with and under the ecclesiastical jurisdiction of the Presbyterian Church of Canada, in connection with the Church of Scotland.

That said Petitioner is a Member and Minister of the Church of Scotland, and a Protestant Clergyman.

That the said Respondents, the Board for the Management of the Temporalities' Fund of the Presbyterian Church of Canada, in connection with the Church of Scotland, is a body politic and corporate, duly incorporated under a Statute of

778



the heretofore Province of Canada, 22; Vic. Cap. 66; having an office and its principal place of business in the city of Montreal, in the District of Montreal, in the Province of Quebec.

That, in the year eighteen hundred and fifty, Petitioner was duly licensed as a probationer and minister of the Church of Scotland by Law established in that part of the United Kingdom of Great Britain and Ireland, called Scotland, and Petitioner came to the heretofore Province of Lower Canada, now the Province of Quebec, as an ordained missionary of the said Church of Scotland in the year eighteen hundred and fifty-two, and thereupon commenced and continued to labour and preach and teach as a missionary and minister of said last mentioned 10 Church continuously in the said City of Montreal, until the year eighteen hundred and fifty-three.

That subsequently, on or about the seventh day of October, eighteen hundred and fifty-three, Petitioner, as a minister and missionary of the said Church of Scotland, removed from the said City of Montreal, and was admitted to and became a member of the Presbytery of Glengarry, in the now Province of Ontario, which said Presbytery was then and still is under the ecclesiastical jurisdiction of the Presbyterian Church of Canada, in connection with the Church of Scotland, and of the Synod of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and the Petitioner thereupon became a member and a ministe 20 of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and as such was duly appointed as minister and incumbent to the charge and pastorate of the Church and Congregation in connection therewith, designated the Church and congregation of Osnabruck, situated in the Township of Osnabruck, in the County of Stormont, in the now Province of Ontario, then the section of the Province of Canada, known and designated as Upper Canada, and also as Canada West.

That since said last mentioned date, Petitioner has continued to be and to act as a minister of the said Presbyterian Church of Canada, in connection with the 30 Church of Scotland, within the heretofore Province of Canada and within the Dominion of Canada, and has been at all times, and is now, as such, in good standing in the said Church and in the Synod thereof.

That the Petitioner, as a member and minister of the Church of Scotland, and as a member and minister of the Presbyterian Church of Canada, in connection with the Church of Scotland, and as a member of the Synod of the said last mentioned Church, and as a Protestant clergyman, since the date of the Petitioner's induction into the ministry as aforesaid, continuously unto the present time, became and was entitled to a share of and to a right of ownership in and to participate in the proceeds of certain lands of the Crown within the Provinces of Upper and 40 Lower Canada, respectively, and in the rents, profits and emoluments derivable therefrom, as in the Acts and Enactments relating thereto declared.

That by Acts of the Imperial Parliament of Great Britain of the Imperial Parliament of the United Kingdom of Great Britain and Ireland, the Sovereigns of Great Britain and of the United Kingdom of Great Britain and Ireland, were empowered to authorize the Governor, or Lieutenant Governor, of each of the then Provinces of Upper and Lower Canada, respectively, to make from out of the Lands of the Crown within said Provinces respectively, such allotment and appropriation of Lands as therein mentioned, for the support and maintenance of the Protestant

C
S
n
f
n
t
H
t
d
o
th
p
of
de
R
fu
th
Pr
be

clergy within the said Provinces, and to apply the rents, profits and emoluments which might at any time arise from such Lands, so allotted and appropriated, solely for the maintenance and support of a Protestant clergy within the Province in which the same might be situated and to no other purpose whatever.

That subsequently thereto, in pursuance of the said Acts, certain Lands of the Crown were from time to time reserved for the purposes mentioned therein, which said lands were known, and were and are commonly designated by the name of the "Clergy Reserves."

That the Governor, Lieutenant-Governor, and Administrator of the heretofore Provinces of Upper and Lower Canada, respectively, were empowered with the consent of the Executive Council of such Provinces, respectively, and in pursuance of His Majesty's instructions, to sell and convey a part of the said "Clergy Reserves" in each of the said Provinces, and to invest the proceeds of such sales in the Public Funds of the said United Kingdom, and to appropriate the dividends and interests of the moneys so invested for the support and maintenance of a Protestant clergy within the said Provinces, solely and to no other purpose whatever.

That by another Imperial Act, the sale of the entire Clergy Reserves in the Province of Canada and the investment of the proceeds of such sale, and the distribution of the interests and dividends of such investment, subject to certain conditions, were authorized for the purposes hereinbefore mentioned.

That by another Imperial Act the Legislature of the heretofore Province of Canada was authorised to dispose of said Clergy Reserves and to make such investment of the proceeds thereof as to the said Legislature might seem meet, subject to the proviso, that it should not be lawful for the said Legislature of the Province of Canada, by any Act or Acts thereof as aforesaid, to annul, suspend or reduce any of the annual Stipends which had, previously thereto, been already assigned and given to the clergy of the Churches of England and Scotland, or to any other religious bodies or denominations of Christians in Canada (to which the faith of the Crown was pledged) during the lives or incumbencies of the parties then receiving the same, or to appropriate or apply to any other purpose, any part of the said proceeds, investments, interests, dividends, rents and profits that might be required for the payment of the stipends and allowances due or accruing to the Ministers and Missionaries of the said churches of England and Scotland during their lives or incumbencies.

That the Imperial Acts, to wit, the Acts of the Parliament of Great Britain and of the United Kingdom of Great Britain and Ireland hereinbefore referred to, the whole of which are herein invoked, are specifically referred to in the Act passed by the heretofore Province of Canada, in the eighteenth year of the reign of Her Majesty Queen Victoria, entitled, 18 Victoria, Chapter 2.

That under and by virtue of the said last mentioned Act, it was enacted and declared that the moneys arising from the sale and disposal of the said Clergy Reserves in the said Province of Upper Canada should continue to form a separate fund, which should be called the "Upper Canada Municipalities' Fund," and that the moneys arising from the sale and disposal of the Clergy Reserves in the said Province of Lower Canada should continue to form a separate fund, which should be called the "Lower Canada Municipalities' Fund," and that after deducting the

...

i
i
l
t
e
d
e
t
p
p
a
a
C
fr
M
w
nu
he
co
sa
Ch
mi
ad
18
ou
ele
offi
hun

necessary expenses attending the sales of the said Clergy Reserves, and managing the same and the said Funds, the money forming the said Funds, or that had previously arisen therefrom, should be paid into the hands of the Receiver General of the heretofore Province of Canada, to be by him applied according to the purposes of the said last mentioned Act.

That by virtue of the said last mentioned Act, the annual stipend and allowance which had been, before the passing of the Act of Parliament of the United Kingdom, in the sixteenth year of Her Majesty's reign, assigned or given to the clergy of the Churches of England and of Scotland, or to any other religious bodies or denominations in either section of the Province, and chargeable ¹⁰ under the said Act of Parliament on the Clergy Reserves in such section (and to which the faith of the crown was pledged) should, during the natural lives or incumbencies of the parties, (to wit, the Ministers and Missionaries of the said churches and religious denominations receiving the same at the time of the passing of the said Act, to wit, the Imperial Act 16 Vict.) be a first charge on the Municipalities' Fund for that section of the Province, and should be paid out of the same in preference to all other charges or expenses whatever.

That by the Act of the late Province of Canada (18 Vic: Cap. 2) it was enacted that the Governor of the said Province of Canada might, whenever he might deem it expedient, with the consent of the parties and bodies severally interested, ²⁰ commute with the said parties such annual stipends or allowances for the value thereof, to be calculated at the rate of six per centum per annum upon the probable life of each individual, and that such commutation amount should be paid accordingly out of that Municipalities' Fund, upon which such stipend or allowance was made chargeable by the said last mentioned Act.

That under and by virtue of the said last mentioned Act, each of the Ministers and Missionaries of the Presbyterian Church of Canada in connection with the Church of Scotland, then receiving benefits within the said Province of Canada from the said Clergy Reserves, or from the proceeds thereof, or from the Municipalities' Funds within the respective sections of the said Province of Canada, ³⁰ was entitled to receive a sum of money as commutation for the value of the annual stipend or allowance payable to him therefrom, and for the interest which he had individually, and as a member of the Presbyterian Church of Canada, in connection with the Church of Scotland, in the said Clergy Reserves and in the said Municipalities' Fund, arising therefrom.

That the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, was duly summoned for the purpose of taking such steps as might be necessary to enable the said Synod and the members thereof to take advantage of the commutation clauses in the said Act of the Legislature of Canada, 18 Vict. Cap. 2, and the said Synod duly met and determined and decreed as set ⁴⁰ out in the minutes hereinafter cited, in the City of Montreal, on the tenth and eleventh days of January, eighteen hundred and fifty-five.

The following is a copy of the Proceedings of said Synod, extracted from its official records at pages three to eight of the Proceedings of Synod for eighteen hundred and fifty-five.

I
 S
 E
 H
 M
 J
 M

to
et

R

po
th
la
fo
co
pe
thi

ACTS AND PROCEEDINGS

OF THE

Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, begun at Montreal the tenth day of January, and concluded the eleventh day of January, eighteen hundred and fifty-five years.

SESSION XXVI.

Diet I.

At Montreal, and within St. Andrew's Church there; Wednesday, the tenth day of January, one thousand eight hundred and fifty-five years.

The which day, after sermon by the Reverend Dr. Mathieson, from Psalm XLVIII. 12. 13: "Walk about Zion and go round about her, tell the towers thereof: mark ye well her bulwarks, consider her palaces, that ye may tell it to the generation following," the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, met, *pro re nata*, and was constituted with prayer by the Moderator, the Reverend James Williamson, A. M. Sederunt: Mr. James Williamson, *Moderator*; Mr. John McMurchy, Mr. John Barclay, Dr. Alexander Mathieson, Mr. James Anderson, Mr. James C. Muir, Dr. John Cook, Mr. William Simpson, Mr. Alexander Wallace, Dr. Robert McGill, Mr. James T. Paul, Mr. Thomas 20 Haig, Mr. Archibald H. Milligan, Mr. John McDonald, Mr. John McKenzie, Mr. Hugh Urquhart, Mr. John McLaurin, Mr. Thomas McPherson, Mr. Eneas McLean, Mr. Donald Munro, Mr. Thomas Scott, Mr. Andrew Bell, Mr. Robert Dobie and Mr. John White, *Ministers*; together with Mr. Alexander Morris, Mr. John Thompson, Mr. Thomas A. Gibson, and the Hon. Thomas McKay, *Elders*.

The Moderator laid before the Synod a Requisition, which had been addressed to him, calling on him to summon a meeting of the Synod; also a copy of his circular calling the present meeting. The same were read, as follows:—

QUEBEC, 11th Dec., 1854.

Reverend and Dear Sir,

30

I beg to intimate to you that it is the opinion of the Committee of Synod, appointed to watch the progress of Legislation in respect of the Clergy Reserves, that the Bill introduced by Government, having now passed both Houses of the Legislature, it is desirable that a meeting of Synod should be called as early as possible for the purpose of taking such steps as may be necessary to take advantage of the commutation clause in said Bill, and in name of the Committee I beg very respectfully to request that you will call such meeting at the time and place you think most convenient.

I am, Reverend and Dear Sir,

Your faithful servant,

40

JOHN COOK.

We, the undersigned, hereby concur in the necessity of calling a special meeting of Synod at the earliest period the forms of the Church will admit.

ALEX. MATHIESON,
ROBERT MCGILL.

The Reverend,

The Moderator of the Synod of the
Presbyterian Church of Canada,
in connection with the Church of Scotland.

KINGSTON, 20th December, 1854.

Reverend and Dear Sir,—

10

In compliance with a request addressed to me by the Convener and other members of the Committee appointed to watch over the progress of legislation in respect to the Clergy Reserves, to call a special meeting of Synod as early as possible for the purpose of taking such steps as may be necessary to take advantage of the Commutation clause in the Act which has lately been passed by the Provincial Parliament, I have now to intimate to you that a Special Meeting of Synod will be held in St. Andrew's Church, Montreal, on 10th January, 1855, being the second Wednesday of the month, at half-past six p m.

I am, Reverend and Dear Sir,

Yours faithfully,

20

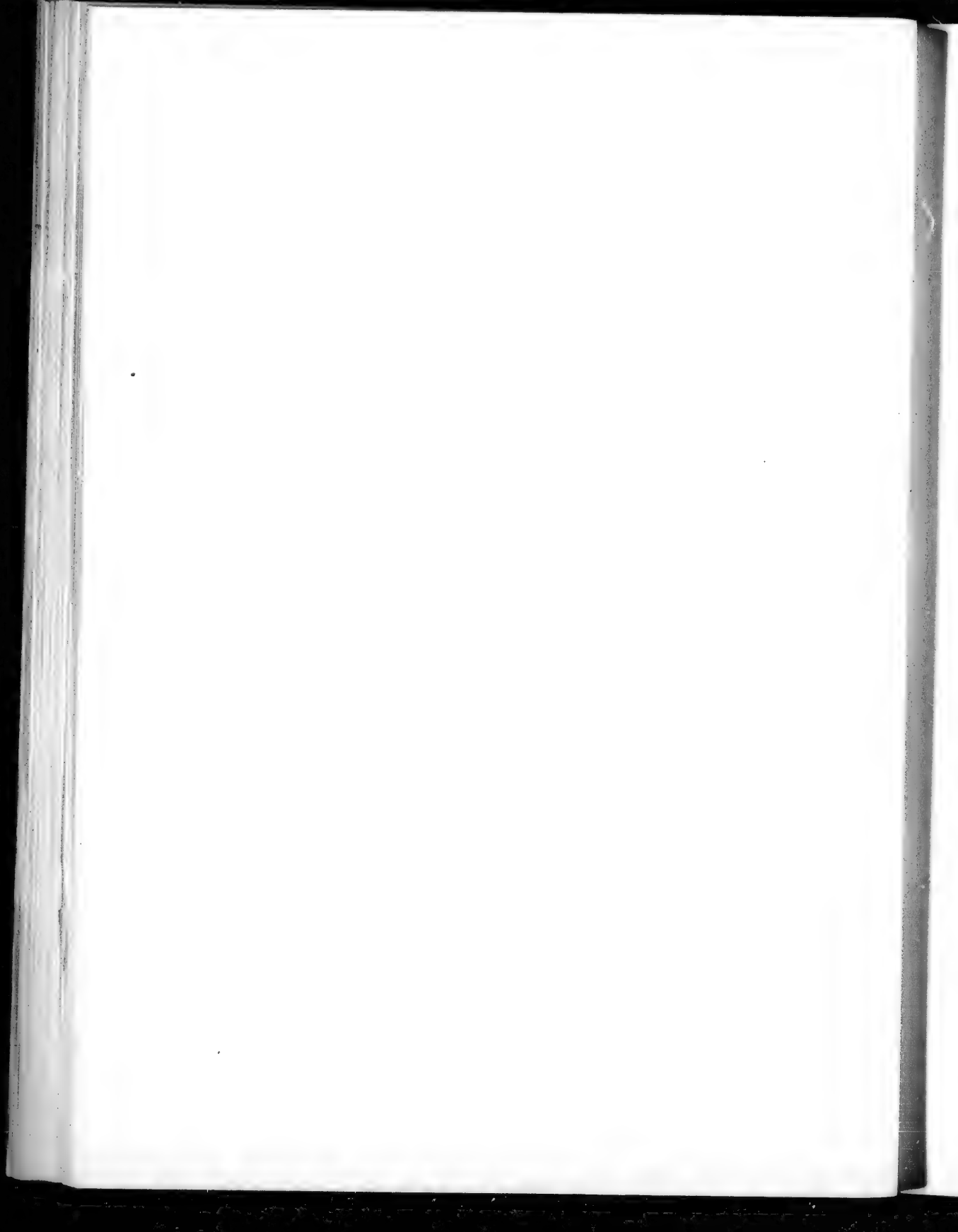
JAMES WILLIAMSON, *Moderator*.

P.S.—It has been thought by several of my brethren, with whom I have conferred on the subject, and I concur in the opinion, that in the circumstances of the case, Montreal is, on the whole, the most suitable place for the meeting of Synod on this occasion.

The Synod unanimously agreed to approve the Moderator's conduct in calling this meeting.

The Synod then called for the report of the Committee appointed to watch over the interests of the Church in regard to the Clergy Reserves, which was given in and read by Dr. Cook, the Convener, stating that the Bill for the Secular-³⁰ization of the Clergy Reserves, which had been introduced into Parliament by the Government, had been carried in both Houses, and assented to by the Governor-General:—that it contained a clause securing to all ministers settled previous to the 9th May, 1853, the date of the passage of the Imperial Act, payment of their salaries from the Clergy Reserve Fund during their lives or incumbencies, and at the same time authorizing the Government to commute the claims of incumbents, with the consent of the parties and bodies severally interested, and that the Committee, for reasons which they stated, had not considered it expedient to interfere in any way with the passing of the said Bill, but, feeling assured from many considerations that it would be for the benefit of the Church to take advantage of⁴⁰ the Commutation clause of the Act, the Committee had requested the Moderator to call a *pro re nata* meeting of Synod to take the matter into consideration, and make the necessary arrangements; and the Committee further, and at great length, recommended that the Synod should agree to commutation.

The Synod approved of the conduct of the Committee, and after some discussion agreed to defer the further consideration of the report until to-morrow, and



instructed the aforesaid Committee to draft resolutions to be then laid before the Synod for their consideration as to their action in the matter.

The Synod agreed to spend a portion of time in the morning in devotional exercises.

The Synod then adjourned, to meet again at half-past eleven o'clock to-morrow forenoon, and was closed with prayer.

Diet II.

At Montreal, and within St. Andrew's Church there; Thursday, the eleventh day of January, one thousand eight hundred and fifty-five years :—

The which day, the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, met, according to adjournment, and was constituted with prayer.

On the call of the Moderator, the Rev. Dr. Cook conducted the devotional exercises of the Synod in praise, reading the scriptures, and prayer.

The minutes of yesterday were read and approved.

The clerk stated to the Synod, that he had received, a considerable time ago, a letter from the Inspector General's Department of the Government, requesting him to make a return, to be laid before Parliament, of all persons connected with this Church, "who at the date of the passing of the Act of the Imperial Parliament to make provision concerning the Clergy Reserves of this Province, viz : 9th May, 1853, were receiving any income or allowance from such portion of the proceeds of the Clergy Reserves as had been granted to the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, specifying the names and ages of such persons, the annual amounts of their allowance, and through whom it is paid ;" and that he had immediately issued a circular to the several parties, requesting a statement of their ages, to be returned to him,—Mr. Allan, of Montreal, having kindly offered to furnish him with some other items ;—but that he had been as yet unable to make the required return, in consequence of a considerable number of the ministers having neglected to make returns to him, although written to a second time on the subject ; and that he had also, at the suggestion of some of the Clergy Reserve Commissioners, written to all of the parties whose names were on the Roll for salaries. The Synod, while approving of the conduct of the clerk, directed him to use all diligence in procuring as soon as possible, the whole of the required information, and in transmitting to the Government the list of incumbents up to 9th May, 1853, to furnish, at the same time, the names of those since put upon the roll as having, in the estimation of the Synod, claims upon the Fund.

The Committee, appointed yesterday to arrange measures for the consideration of the Synod, reported certain resolutions which the Synod proceeded to discuss at length.

The Synod, having heard the report of the committee appointed by the Synod to watch over the interests of the Church, in as far as these might be affected by the action of the Legislature on the Clergy Reserves, and, also, the verbal reports of such members of the committee as had been in communication with

[illegible]

members of the Government on the subject,—and, having seriously and maturely considered that clause of the Clergy Reserves Act, lately passed by the Provincial Parliament at its present session, by which His Excellency the Governor in Council is authorised, with the consent of the parties interested, to commute the salaries or allowances of ministers chargeable for life or during their incumbencies on the Clergy Reserves Fund, for their value in money,—Resolved,

“1st. That it is desirable that such commutation, if upon fair and liberal terms, should be effected; and that the Rev. Alex. Mathieson, D.D., of Montreal, the Rev. John Cook, D.D., of Quebec, Hugh Allan, Esq., of Montreal, John Thompson, Esq., of Quebec, and the Hon. Thomas McKay, of Ottawa City, be the Synod’s Commissioners, with full power to give the formal sanction of the Synod to such commutation as they shall approve, the said Commissioners being hereby instructed to use their best exertions to obtain as liberal terms as possible; the Rev. Dr. Cook to be Convener; three to be a quorum; the decision of the majority to be final, and their formal acts valid; but that such formal sanction of the Synod shall not be given except in the case of Ministers who have also individually given them, the said Commissioners, power and authority to act for them in the matter to grant acquittance to the Government for their claims to salary to which the faith of the Crown is pledged; and to join all sums so obtained into one Fund, which shall be held by them till the next meeting of Synod, by which all further regulations shall be made; the following, however, to be a fundamental principle—10
“which it shall not be competent for the Synod at any time to alter, unless with, the consent of the Ministers granting such power and authority; that the interest of the fund shall be devoted, in the first instance, to the payment of £112 10s. each, and that the next claim to be settled, if the Fund shall admit, and as soon as it shall admit of it, to the £112, 10s., be that of the Ministers now on the Synod’s Roll, and who have been put on the Synod’s Roll since the 9th May, 1853; and, also, that it shall be considered a fundamental principle, that all persons who have a claim to such benefits, shall be Ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, and that they 20
“shall cease to have any claim on, or be entitled to any share of said commutation Fund whenever they shall cease to be Ministers in connection with the said Church.

“2nd. That so soon as said commutation shall have been decided upon, and agreed to by the said Commissioners, the Rev. John Cook, D.D., of Quebec, shall be fully empowered and authorised, and this Synod hereby delegate to the said Rev. Dr. John Cook full power and authority to endorse and assent to the several Powers of Attorney from the individual parties on behalf of the said Synod, and in their name, and as their Act and Deed, as evidencing their assent thereto.

“3rd. That all Ministers be, and they are hereby enjoined and entreated, (as to 40
“a measure by which, under Providence, not only their own present interests will be secured, but a permanent endowment for the maintenance and extension of religious ordinances in the Church) to grant such authority in the fullest manner, thankful to Almighty God that a way so easy, lies open to them for conferring so important a benefit on the Church.

“4th. That the aforesaid Commissioners be a Committee to take the necessary steps to get an Act of Incorporation for the Management of the General Fund,

to
e
in
th

of
fo
w
(U

be
op
tio
ser
in
wi
gra
ho
Ki
nee
the
Wh

the
ind
hea
the
test
civi
and
the
tude
in t
the
ed t
dram
to re

term
distr
to.

"so to be obtained : the aforesaid Commissioners to constitute the said Corporation till the next meeting of Synod, when four more members shall be added by the Synod."

The Synod ordered the minutes of this meeting to be printed, and a copy sent to each Minister as soon as possible, and they further instructed their Commissioners, named above, to address a circular to the several ministers, showing them the importance of commuting upon the plan agreed to at this meeting, and giving them full information on the subject.

The Synod requested their Moderator to convey to the Hon. John Hamilton, of Kingston, and the Hon. Thomas McKay, of Ottawa, the thanks of this Synod for the assistance afforded by them to the Clergy Reserve Committee of this Synod, when lately met at Quebec, and for their exertions on behalf of the interests of this Church, especially during the present session of Parliament.

The business for which the special meeting of Synod had been called, having been finished, the Reverend Dr. Mathieson stated "that he availed himself of the opportunity which this special meeting of Synod afforded, to direct the attention of the congregations within the bounds to the call made by the General Assembly of the Church of Scotland, and generously responded to by every parish in the land to contribute to the National Patriotic Fund for the relief of the wives and children of the brave men who have been disabled or found a soldier's grave in fighting for the honour of their country, and the liberty, and (it is to be hoped) the ultimate peace of the world, and the advancement of the Redeemer's Kingdom ; and, also, to the circumstance, that several of the congregations in connection with this Synod have already contributed or were anxious to contribute their subscriptions through the channel thus afforded them, to the Patriotic Fund." Whereupon Dr. Mathieson moved to resolve, and it was resolved accordingly :

"That this Synod deeply sympathise with Her Majesty and her people in the great struggle, in which she has been constrained to engage, for the liberty and independence of nations. Sympathising also with the numerous families, whose hearts, in the inscrutable Providence of God, have been filled with sorrow for the loss of their natural protectors, or their friends who have fallen in the contest, and being deeply sensible of, and grateful for, the inestimable blessings, both civil and religious, which this colony enjoys, under Her Majesty's gracious sway, and its connection with the parent State, this Synod strongly recommend to all the congregations within their bounds, not only as an expression of their gratitude and sympathy, but as a solemn duty, at the earliest convenient season, and in the way that to the Minister and Elders seems best, to make contributions to the National Patriotic Fund :—and that Hew Ramsay, Esq., Montreal, be appointed to receive from the respective congregations their several contributions, and transmit them to William Young, Esquire, W.S., Edinburgh, who has been appointed to receive the contributions of the Church."

The Synod was then closed with prayer.

That the said proceedings of the said Synod are valid and binding ; that the terms and conditions thereby established and declared, form the basis for the distribution and application of the said Fund, hereinbefore and hereinafter referred to.

That the sole business submitted at the meeting of the said Synod of the

o
t
M
e
i

m
a
ti
C

an
ci
be
in

" i
" C
" w
" e
" O
" to
" si

" M
" pe
" fo
" gr
" sh
" ea
" M
" sin
" su
" nec
" the

" to i
" Cor
" rec
" wit
" Ma
" sal

Presbyterian Church of Canada, in connection with the Church of Scotland, at the diets thereof, held on the tenth and eleventh days of January, eighteen hundred and fifty-five, was the consideration of giving force and effect to the clause permitting the Governor of the then Province of Canada in Council to commute the claims of Ministers, Incumbents and Missionaries upon the Clergy Reserves Funds, with the consent of the bodies and parties severally interested, as set out in the minutes hereinafore recited.

That the said Synod, on its own behalf and on behalf of its members, determined at its said meeting to take advantage of the said commutation clause, and appointed a committee, styled Commissioners, to give effect to the said determination, and the said Synod ordered said minutes to be printed, and instructed said Committee to send a copy thereof to each minister entitled to commute.

That the said Reverend John Cook, Doctor of Divinity, was appointed convener and Chairman of said Committee, and as such, was authorized to, and did, address a circular to all the then Ministers and Incumbents of the said Church entitled to benefits from the said Funds, among others to the Petitioner, which circular was in the following words:—

“ Quebec, 24th February, 1855.

“ Revd. Sir,

“ I am instructed by the Commutation Committee appointed at the last meeting of Synod, to enclose to you two Powers of Attorney, approved by the Government and by the Synod, which it is necessary you should sign and forward to Hugh Allan, Esq., Montreal, without delay,—in order to our obtaining a commutation of Clergy Reserve money, which will be advantageous to the Church. All the Ministers present at the meeting of Synod in January, agreed to commute, and the Ministers of the Church of England have unanimously signed similar powers to those now forwarded to you.

“ The fundamental conditions contained in the minutes of the Synod, held at Montreal, on the 11th January, 1855, which are alluded to in one of these powers, and which by the terms of the said minutes, it shall not be competent for the Synod at any time to alter, unless with the consent of the Ministers granting such power and authority,” are first, “That the interest of the Fund shall be devoted in the first instance, to the payment of salaries of £112 10s each,” to such Ministers, “ and that the next claim on the Fund shall be that of Ministers on the Roll of the Synod, and who have been put on the Synod’s Roll since the 9th May, 1853;” and, second, “That all persons who have a claim to such benefits, shall be Ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, and shall cease to have any claim, when they cease to be Ministers in connection with the said Church.”

“ Of these conditions it is presumed you will approve, and I have the satisfaction to inform you, that on the terms proposed by the Government, and to which the Commutation Committee are prepared to agree, as soon as these powers are received from the Ministers of the Church, it will be certainly possible to comply with the first condition, in so far as respects Ministers settled before the 9th May, 1853, and, preserving the capital, to secure to them, from the interest salaries of £112. 10s. for life, or incumbency. And it is, therefore, earnestly en-

C
si
th
th
p
h
to
Ch

te
Co
ap
di
pa
hu

tio
Re
nin
a s
am
in
hus
form
of c
nev
pro

said

"treated that there may be no hesitation or delay in signing and forwarding these powers.

"I am further instructed to call your attention to the following Resolution, passed unanimously, at the last meeting of Synod :—

"That all ministers be, and they are hereby enjoined and entreated, (as to a measure, by which, under Providence, not only their own private interests will be secured, but permanent endowment for the maintenance and extension of Religious ordinances in the Church,) to grant such authority as is necessary to effect a commutation, in the fullest manner, thankful to Almighty God, that a way so easy is open to them for conferring so important a benefit on the Church." Not doubting that you will concur in the views of the Synod,

"I am,

"Rev'd. Sir,

"Your obedient Servant.

(Signed)

JOHN COOK, *Convener.*"

"To the Reverend."—

That Petitioner and other Ministers and Incumbents of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and the Missionaries of the said Church of Scotland, renounced their individual rights in the said Fund, and authorised the said John Cook to act for each of them and in their behalf, for and by reason of the terms and conditions of the resolutions passed at the said meeting of Synod on the tenth and eleventh January, eighteen hundred and fifty-five, and more especially upon the consideration that the Fund to be created thereby would be a permanent endowment for the Presbyterian Church of Canada, in connection with the Church of Scotland.

That no change could be made in the distribution and application of the interest and revenues accruing on the said Fund received under the said Commutation Act, and the Acts therein referred to, without the full consent and approval of each and all of the commutating Ministers who renounced their individual interests therein, in consideration of the matters set out in the resolutions passed at the said meeting of Synod on the tenth and eleventh January, eighteen hundred and fifty-five.

That on and since the ninth of May, eighteen hundred and fifty-three, the Petitioner was entitled to the benefits derivable from the proceeds of the said Clergy Reserves under the said Imperial and Provincial acts relating thereto, and on the ninth day of May, eighteen hundred and fifty-three, Petitioner was in the receipt of a stipend and allowance therefrom amounting to upwards of one hundred pounds annually, and further at the date of the passing of the resolutions of the said Synod in favour of the said commutation, to wit, on the eleventh day of January, eighteen hundred and fifty five, the annual value of Petitioner's stipend and allowance, forming a life claim payable to him by and out of said sums, amounted to the sum of one hundred and fifty pounds currency per annum, and the said Petitioner has never done anything to forfeit his right to participate in the said Fund, or in the proceeds, profits or revenues thereof.

That during the year eighteen hundred and fifty-five, and after passing of the said resolutions by the said Synod, the said Petitioner did commute the claims

C
s
C
N
a
a
P
P
P
th
d
h
C
to
w

P
ha

ter
the
res
Re
and
(£
cou
and
the

(22
for
to
Act
said
con

due to him by the said Fund, with the Government, by and through the said Commissioners, upon the conditions set out in said resolutions, and the said Petitioner did thereby consent to renounce his personal rights in the said Clergy Reserves, and in the proceeds thereof in favour of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and did consent that the amount of the capital sum due and to accrue to him, should be joined with the amount due and to accrue to other Ministers of the said Church, and that all sums thus obtained should be joined into one fund, which should be held in Trust by the said Commissioners, in the said resolution named, till the meeting of the Synod next ensuing, by which all further regulations should be made, but the said renunciation of the Petitioner's rights was made subject to the fundamental principle (which it was declared not to be competent for the said Synod at any time to alter, unless with the consent of the Ministers granting such power and authority) namely, that the interest of the said Fund to be so created, should be devoted, in the first instance, to the payment of one hundred and twelve pounds, ten shillings, to each member then on the Synod Roll and who was on the Synod Roll on ninth May, eighteen hundred and fifty-three, and that the next claim to be settled, if the said fund should admit, and as soon as it should admit of it, to the one hundred and twelve pounds, ten shillings, be that of the Ministers whose names at the time of the passing of the said resolutions were on the said Synod Roll and which had been 10 put on the said Synod's Roll since the ninth of May eighteen hundred and fifty-three, up to the date of the passing of the said resolution; and, also, upon the condition that it should be considered a fundamental principle that all persons who have a claim to such benefits should be ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, and that they should cease to have any claim on or to be entitled to any share of the said Commutation Fund whenever they should cease to be Ministers in connection with the said Church.

That the said Petitioner has always maintained his connection with the said Presbyterian Church of Canada, in connection with the Church of Scotland, and has done nothing to forfeit his rights and privileges therein. 30

That the funds placed in the hands of the said Commissioners, subject to the terms, conditions and fundamental principles of the said resolutions, to be held for the purpose, and subject to the restrictions herein mentioned, to wit, the funds resulting from the original Commutation claims of the Ministers upon the Clergy Reserves, exclusive of all other Contributions to it, amounted in eighteen hundred and fifty-five to the sum of One Hundred and Twenty-Seven Thousand Pounds, (£127,000) which said sum constituted, and was, and is, a Trust Fund, which could not be diverted from the purposes for which it was originally created, and the said Commissioners and their legal successors held the same in trust for the Presbyterian Church of Canada, in connection with the Church of Scotland. 40

That afterwards, an Act of the heretofore Parliament of Canada was passed (22 Vic., Cap. 66) to incorporate a Board for the management of the said Fund, and for such other funds as should be contributed, subscribed or paid in, from time to time, and that it was therein declared, at the time of the passing of the said Act, that said funds were held in trust by certain Commissioners on behalf of the said Church, and for the benefit of the said Presbyterian Church of Canada, in connection with the Church of Scotland.

C
t
n
f
t
a
e
o
fo
th
(-
ar
C
th

V
se
" J
" C
for
the

jec
No
of
of t

That at the time of such Commutation the funds arising therefrom, and which were constituted into one fund, amounted to the sum of One Hundred and Twenty-seven thousand Pounds, which it was declared, by a By-law passed under the provisions of the last mentioned Act, should be kept separate and distinct from any other funds which might come into the possession of the Board of Management of the Temporalities' Fund of the Presbyterian Church of Canada, in connection with the Church of Scotland.

That under the provisions of the said last mentioned Act, a body corporate and politic was created under the name of the "Board for the Management of the "Temporalities' Fund of the Presbyterian Church of Canada, in connection with the "Church of Scotland," to wit, the Corporation, Respondents,¹⁰ which said Board it was declared, among other things, should consist of twelve members, of whom five should be ministers and seven should be laymen, all being ministers or members in full communion with the said Church, and of whom seven should be a quorum; and that the said Board should thenceforth have, hold, possess and enjoy, in trust for the said Church (meaning the said Presbyterian Church of Canada, in connection with the Church of Scotland) and for the purposes in the said Act and in the preamble thereof mentioned, all moneys, debentures, bonds, bank or other stocks and securities which were then held by the Commissioners of the said Church, in Trust for the said Church, under the terms of the resolutions of the tenth and²⁰ eleventh of January, eighteen hundred and fifty-five, hereinbefore cited, and subject to the conditions in the said Act mentioned.

That the said last mentioned Corporation continued to manage and administer the Trust Fund arising from the original commutation, and divers other funds contributed for the purposes mentioned in the said last mentioned Act, until the fifteenth day of June, eighteen hundred and seventy-five, when the aggregate amount of the funds, assets, and money under the control of the said last mentioned Corporation, Respondent, and by them held in trust for the Petitioner and for all others entitled to participate in the revenues and interests accruing thereon, and for the benefit of said Church, amounted to the sum of four hundred and sixty-³⁰ three thousand, three hundred and seventy-one dollars and fifty-two cents, (463,371.52) at par value, according to statement dated first May, eighteen hundred and seventy-five, as set out in the Acts and Proceedings of the Synod of the said Church for eighteen hundred and seventy-five, at page forty-five of the Records thereof.

That an Act was passed by the Legislature of the Province of Quebec (38 Vic : Cap : 64) assented to on the twenty-third February, eighteen hundred and seventy-five, entitled an act to amend the act intituled "An Act to incorporate the "Board for the management of the Temporalities' Fund of the Presbyterian "Church of Canada, in connection with the Church of Scotland" and providing⁴⁰ for the administration and distribution of the funds held and administered under the Act of the late Province of Canada (22 Vict : Cap : 66).

That the said Act of the Province of Quebec (38 Vic., Cap. 64) relates to subject matters beyond the competency of the Local Legislature under the British North America Act, 1867, to wit, the Act of the Parliament of the United Kingdom of Great Britain and Ireland, (30th and 31st Vic., Cap. 3), and the Legislature of the Province of Quebec was incompetent to pass said Act; and the said Act of

re
wi
tro
me
wh
for
Vic
the

the Province of Quebec, in so far as it derogates from, or purports to modify or vary the Act 22 Vic., Cap. 66, of the heretofore Province of Canada, is null and of no effect.

That the subject matters of said Act of the Legislature of Quebec are not of a mere local or private nature within the Province of Quebec, but affect the rights of persons residing beyond the Province of Quebec, and not subject to its jurisdiction.

That the Petitioner is not subject to the legislation of the said Province of Quebec affecting his interests in the said funds, and the said Legislature of said Province of Quebec has exceeded its competency and jurisdiction in passing 10 said Act.

That the interests of the Petitioner in the moneys arising from the said commutations and in the Temporalities' Fund, as constituted by the Act (22 Vic., Chap. 66) of the late Province of Canada, are not of a mere local or private nature in the Province of Quebec, but are a matter of general interest.

That the objects of the Corporation, Respondents, under the Act 22 Vic., Cap. 66, of the heretofore Province of Canada, were not, and are not, of a provincial nature, but extend to persons residing in the Provinces of Ontario and Quebec.

That the said Act of the Legislature of the Province of Quebec is illegal and unconstitutional, and beyond the competency of the said Legislature. 20

That the said Act of the Legislature of the Province of Quebec (38 Vic., Cap. 64) is further illegal and unconstitutional, in permitting and providing for the payment of an annual stipend to ministers who have ceased to be members of, or to have any connection with the Presbyterian Church of Canada, in connection with the Church of Scotland, and in providing that the Temporalities' Board, to wit, the Corporation, Respondents, should, if necessary, draw upon the capital fund, to wit, the Temporalities' Fund, in order to provide for the payment of the stipends and salaries to ministers, as mentioned in the said last mentioned Act, and in providing that: "As often as any vacancy in the Board for the
"management of the said Temporalities' Fund occurs by death, resignation or 30
"otherwise, the beneficiaries entitled to the benefit of the said Fund may each
"nominate a person, being a minister or member of the said United Church; or in the
"event of there being more than one vacancy, then one person for each vacancy and
"the remanent members of the said Board, shall thereupon from among the persons
"so nominated as aforesaid, elect the person or number of persons necessary to fill such
"vacancy or vacancies, selecting the person or persons who may be nominated by the
"largest number of beneficiaries to nominate as aforesaid, the remanent members of
"the Board shall fill up the vacancy, or vacancies, from among the Ministers, or
"members of the said United Church," thus depriving a Minister who may have
retained his connection with the Presbyterian Church of Canada, in connection 40
with the Church of Scotland, of the right to administer the funds under the control of the said Corporation, Respondents, and disfranchising and disqualifying all members of the said last mentioned Church from administering the said Fund which, of right, alone belongs to them; and further in setting aside the legal method for filling vacancies in the Board, Respondents, as prescribed by the said Act 22, Victoria, Chapter 66, and the By-Laws made thereunder. That the said Statute of the late Province of Canada, (22 Vic.: Cap. 66) is legally and constitutionally in

s
L
t
J
a
o
I
a
e
u
a
d
C
l
v
g
r
o
f
f
s
t
C.
se

full force and effect, and the Respondents are subject to its provisions, and the By-Laws made thereunder by the said Presbyterian Church of Canada, in connection with the Church of Scotland, previous to the fourteenth day of June, eighteen hundred and seventy-five, and by those members, Ministers, and Elders of the said last mentioned Church, who remained in connection therewith, and who have not seceded therefrom on and since the fifteenth day of June, eighteen hundred and seventy-five are now in full force.

That the said Respondents have no power to apply the capital sum of one hundred and twenty-seven thousand pounds, or the sum administered by them, to the payment of stipends or to any other purpose whatever, but the said sum and such 10 other sums as should be contributed to it were intended to remain intact as a permanent endowment for the said Presbyterian Church of Canada, in connection with the Church of Scotland: as fully appears from the Minutes and the Synod letter of the Reverend John Cook hereinbefore cited, under the express provisions of both which the Petitioner surrendered his interests in the Clergy Reserves and their proceeds to the said Church.

That the said Respondents had power only to use and apply the revenues, interests and accruals of the said Endowment Fund, for the purposes mentioned in the said Act incorporating the Board, Respondents.

That the Corporation, Respondents, since the fifteenth day of June, eighteen 20 hundred and seventy-five, up to the month of December, eighteen hundred and seventy-seven, have drawn upon the capital of the said Fund to the extent of the sum of forty thousand five hundred dollars and twenty-five cents, (\$40,500.25), illegally and in contravention of the said Act (22 Victoria, Chapter 66) of the heretofore Province of Canada.

That the Reverend John Cook, Doctor of Divinity, of Quebec, the Reverend James C. Muir, Doctor of Divinity, of North Georgetown, in the Province of Quebec, and the Rev. George Bell, Doctor of Laws, (LL.D.), of Walkerton, in the Province of Ontario, were commutators, and did commute their claims, upon the said Clergy Reserves, and upon the funds arising therefrom, concurrently with the Petitioner, 30 and under and subject to the terms of the fundamental principles hereinbefore cited, passed by the said Synod on the eleventh day of January, eighteen hundred and fifty-five, but on and since the said fifteenth day of June, eighteen hundred and seventy-five, the said Reverends John Cook, James C. Muir, and George Bell, did join with another religious association called the Presbyterian Church in Canada, composed of persons who previous to the said fifteenth day of June, belonged to four separate and distinct religious organizations, and extending over various provinces of the Dominion, under four separate and distinct ecclesiastical governments, entirely unconnected with each other, to wit, the Canada Presbyte- 40 rian Church, the Presbyterian Church of Canada, in connection with the Church of Scotland, the Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces, several members from each of which said last mentioned religious organizations united themselves together in a new and distinct religious organization and association called the Presbyterian Church in Canada:—that the said Reverends John Cook, James C. Muir and George Bell, on said fifteenth day of June, eighteen hundred and seventy-five, ceased to be Ministers thenceforward of the Presbyterian Church of

8
C
L
I
f
H
E
C
s
M
b
te

Canada, in connection with the Church of Scotland ; and Petitioner avers that said Reverends John Cook, James C. Muir and George Bell, have not been entitled to receive any benefits from the said Fund, or to be paid any sums of money by the Corporation, Respondents, by reason of their having seceded from, and ceased to be Ministers of the said Presbyterian Church of Canada, in connection with the Church of Scotland.

That since the said fifteenth day of June, eighteen hundred and seventy-five, the said Corporation, Respondents, have paid to the said Reverend John Cook, the sum of eleven hundred and twenty-five dollars ; to the said Reverend James C. Muir, the sum of nine hundred dollars ; to the said Reverend George Bell, the sum 10 of eleven hundred and twenty-five dollars ; out of the said Fund, and the interest and revenues thereof, for Commutation Allowances by the said Corporation, Respondents, alleged to have accrued on said Fund since the said fifteenth day of June, eighteen hundred and seventy-five, in favour of the said Reverends John Cook, James C. Muir, and George Bell, in their quality as members of the Presbyterian Church of Canada, in connection with the Church of Scotland ; though since the said fifteenth day of June, eighteen hundred and seventy-five, the said Reverends John Cook, James C. Muir, and George Bell, have been and are ministers of the said new organization, styled the Presbyterian Church in Canada.

That Petitioner has reason to believe and verily believes, that the Corporation, 20 Respondents, will pay to the said Reverends John Cook, James C. Muir, and George Bell, the sum of two hundred and twenty-five dollars each, on or before the first day of January next, as Commutation Allowances from the said Fund, to each of the said last mentioned Ministers, in their quality as Ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, for the half-year ending thirty-first of December, eighteen hundred and seventy-eight.

That preceding the fifteenth day of June, eighteen hundred and seventy-five, the Reverend John Fairlie, minister of L'Orignal, Province of Ontario, the Reverend David W. Morison, Bachelor of Arts, Minister of Ormstown, Province of Quebec, the Reverend Charles A. Tanner, of Richmond, Province of Quebec, 30 amongst others, not being of the number of original commutators, were not entitled to receive any allowance or stipend or revenue or emolument of any nature or kind from said Fund administered by said Respondents, under the terms of said statute 22 Vic., Cap. 66, unless the interest, revenues and accruals on said Fund, and contributions from other sources thereto, were sufficient to allow the payment of certain allowances or emoluments therefrom after the deduction of the sums payable to the original commutators.

That the said Reverend John Fairlie, Reverend David W. Morison, and Reverend Charles A. Tanner, of Richmond, Province of Quebec, have received from said Corporation, Respondents, since the fifteenth day of June, eighteen 40 hundred and seventy-five, for, and by reason of their connection with and having been Ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, since the said fifteenth day of June, eighteen hundred and seventy-five, the sum of Five Hundred Dollars each, to which said last mentioned Ministers were not entitled, both by reason of having ceased to be entitled to the benefits from the Fund administered by said Corporation, Respondents, under the terms of the resolution of the eleventh of January, eighteen hundred and fifty-

five, the said Reverends John Fairlie, David W. Morison and Charles A. Tanner having ceased to be members of the Presbyterian Church of Canada, in connection with the Church of Scotland, and having joined the said Presbyterian Church, in Canada as aforesaid, and because the revenues and interests accruing on said Fund administered by said Corporation, Respondents, were not sufficient to pay the said Reverends John Fairlie, David W. Morison, and Charles A. Tanner, any allowance or emolument whatever, after the payment and settlement of all legal claims upon the revenues of said fund, and said Reverends John Fairlie, David W. Morison and Charles A. Tanner, were not entitled, respectively, to said sums of Five Hundred Dollars each, either from the revenues and interest or from the capital of 10 said Fund so administered, as aforesaid, by the Corporation, Respondents.

That by the terms of the said Statute, (22 Vic., Cap. 66), incorporating the Corporation, Respondents, it is provided that at the first meeting of the Synod of the said Church there should be elected, by the said Synod, seven members of the said Board, Respondents, of whom four shall be laymen and three ministers, all members of the Presbyterian Church of Canada, in connection with the Church of Scotland, in place of two laymen and one minister, members of the said Board, who should then retire, and that thereafter two ministers and two laymen should retire from the said Board annually, in rotation, on the third day of the annual meeting of the said Synod, and that the place of the retiring members of the said Board, 20 Respondents, should be supplied by two ministers and two laymen, being ministers or members in full communion of the said Church, then to be elected by the said Synod.

That on the fourteenth day of June, eighteen hundred and seventy-five, the following persons composed the duly-elected, eligible members of the said Board, Respondents, entitled to administer the funds and property entrusted to them under the provisions of the said Act, as appears by the Acts and proceedings of the said Synod for the year eighteen hundred and seventy-five:—

Reverend John H. Mackerras, Master of Arts, Professor in Queen's College Kingston, Province of Ontario, the said Reverend Daniel M. Gordon, Reverend 30 John Cook, D.D., Reverend John Jenkins, D.D., Reverend Gavin Lang, James Michie, Esquire, Merchant, Toronto, Province of Ontario; Alexander Mitchell, Esquire, Merchant, Montreal, Province of Quebec; William Darling, Esquire, Merchant, Montreal, Province of Quebec; the said Sir Hugh Allan, John L. Morris, Esquire, Robert Dennistoun, Esquire, and William Walker, Esquire.

That since the date of the said enactment, incorporating the Corporation, Respondents, (22 Vic., Cap. 66), four members of the said Board, Respondents, should have retired therefrom, at each annual meeting of the said Synod.

That in the month of June, eighteen hundred and seventy-six, the following members of the said Board, Respondents, by law ceased to be members of said Board, and should have retired therefrom, to-wit: the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, and Robert Dennistoun, Esquire,

That in the month of June, eighteen hundred and seventy-seven, the following members of the said Board by law ceased to be members of said Board, Respondents, and should have retired therefrom, to-wit: The said Reverend John Cook, Reverend Daniel M. Gordon, John L. Morris, Esquire, and Sir Hugh Allan.

t
i
t
a
J
to
A
D
B
an
as
of
ele
ar
con
ed
me

That in the month of June last past, (1878.) the following members of the said Board, Respondents, by Law ceased to be members of the said Board, and should have retired therefrom, to wit: the said Reverend J. H. MacKerras, William Darling, Esquire, and Alexander Mitchell, Esquire.

That the remaining members of the Board, to wit: the said James Michie, Esquire, has seceded from the said Presbyterian Church of Canada, in connection with the Church of Scotland, and has joined the said Presbyterian Church in Canada, and has ceased to be a member of the Presbyterian of Canada, in connection with the Church of Scotland, and has *ipso facto* vacated his seat as a member of the Board, Respondents, and the said Reverend John Jenkins, Reverend 10 Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, John L. Morris, Esquire, and Sir Hugh Allan, heretofore members of the said Board, Reverend John H. MacKerras, William Darling, Esquire, and Alexander Mitchell, Esquire; were not legally re-elected and appointed members of the said Board, Respondents, and they and the remaining member of the said Board illegally pretend to exercise and do in fact exercise and perform all the functions appertaining to legally elected and appointed members of the said Board.

That the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend 20 Daniel M. Gordon, John L. Morris, Esquire, and Sir Hugh Allan, Reverend John H. MacKerras, James Michie, Esquire, Alexander Mitchell, Esquire, and William Darling, Esquire, are not entitled to administer the said Fund, or to be or remain as members of the Corporation, Respondents, and should be removed from the said Board, and the said Respondents are not entitled further to administer the funds under the control of the Corporation, Respondents, or to make any infringement upon the capital thereof, or to disburse the revenues thereof in any manner whatever, the said Board being illegally constituted.

That the said Corporation, Respondents, have infringed upon the capital of the said Fund under their management and control in the manner hereinbefore 30 indicated, and have illegally paid money, proceeds of the capital and revenues of the said Fund, in the manner hereinbefore indicated, without any legal power or authority so to do, and have illegally continued and permitted the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, and John L. Morris, Esquire, Reverend John H. MacKerras, William Darling, Esquire, and Alexander Mitchell, Esquire; to act as members of the said Board, Respondents, without having fulfilled the formalities prescribed by law and the Act of Incorporation of the Corporation, Respondents, for their election as members of the said Board, and all the members now comprising the Board 40 of the Corporation, Respondents, are illegally exercising the power of legally elected members, and the said Corporation, Respondents, composed as aforesaid, are now acting beyond their power in continuing the exercise of the powers conferred on the said Board without having a *quorum* of the said Board duly elected as members of the said Board, and by permitting the said parties, not being members thereof, to take part in the deliberations and proceedings thereof, and by

t
M
L
a

b
fi
c
V
th
u
bo

a
R
D
A
E
ap
Pe

am
th
tha
(88
gal
,re
of
upo
pro
scri

administering the funds under their control illegally and contrary to the terms of the Act of the heretofore Province of Canada, incorporating the Board to wit: 22 Vic., cap. 66.

That the Corporation, Respondents, have hitherto made the half-yearly payments of Ministers' allowances from said Fund sometime before the day on which such payments to Ministers would become due, to those entitled to receive same, and the Corporation, Respondents, as Petitioner has been credibly informed and believes are immediately about illegally to issue checks in payment of and to pay the pretended allowances which will become due on the first day of January next.

That the said Petitioner has a personal interest in the Funds administered by 10 the Respondents and more especially in that portion of the Funds so administered by them arising from the Commutation, of claims of Ministers upon the Clergy Reserves and the proceeds thereof, and the said Petitioner has a right to allowances therefrom for life, provided he maintains his connection with the Presbyterian Church of Canada, in connection with the Church of Scotland, and does not cease to be a Minister in connection therewith, which said allowances and which said interest in the said Funds are endangered by the infringement upon the Capital of the said Fund, made by the Board, Respondents, and by the illegal payments hereinbefore indicated or made, or that may hereafter be made by the Board, Respondents, out of the capital of the said Fund or the interest or revenues 20 accruing thereon.

That all the payments heretofore made by Respondents to the persons hereinbefore mentioned, since the fifteenth day of June, eighteen hundred and seventy-five, or contemplated to be made out of the said Fund, as hereinbefore stated, are contrary to the provisions of the statute of the heretofore Province of Canada, 22 Vic., Chap. 66, and in so far as they may be ostensibly authorised by the Acts of the Parliament of Quebec, or of any of them, are illegal and unconstitutional, and *ultra vires* of the Corporation, Respondents, as Petitioner is advised and verily believes.

Wherefore the said Petitioner, personally and in his said qualities, prays that 30 a Writ of Injunction may issue against the said Corporation, and against the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, John L. Morris, Esquire, Reverend John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire, enjoining them and each of them to appear before this Honorable Court or a Judge thereof, to answer the present Petition.

That the Act of the Legislature of the Province of Quebec, intituled "an Act to amend the Act, intituled, 'an Act to incorporate the Board for the management of the Temporalities' Fund of the Presbyterian Church of Canada, in connection with 40 the Church of Scotland," passed in the thirty-eighth year of Her Majesty's reign, (38 Vic., Chap. 64), may be adjudged and declared to be unconstitutional and illegal, and be rescinded and revoked, and that the subject matter thereof as therein presented may be declared to be *ultra vires* of the Legislature of the said Province of Quebec, and that it be declared and adjudged, by the judgment to be rendered upon this petition, that the said Corporation, Respondents, are acting and taking proceedings beyond their power, and without having fulfilled the formalities prescribed by law, and by the Act of Incorporation thereof, by permitting the said

C
R
f
R
s
P

a
in
fr

p
th
is
C
M
no

Ge
of
su
sai
A.

last named persons to act as members of the said Board and of the said Corporation, without having been elected as members of such Board in the manner provided by law, and by the said Act of Incorporation, and, further, by administering intermeddling with, and disbursing the funds and property of the said Corporation in a manner and for purposes not authorised by the said Act of Incorporation of the 22nd Vic., Chap. 66; and by holding, administering, dispensing and disposing of the funds and property of the said Corporation, without having a sufficient number of members of the said Corporation elected in the manner provided by law, and in the Act of Incorporation thereof, to constitute a quorum of the said Corporation or of the said Board. And that it be further adjudged and declared that the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, John L. Morris, Esquire, Rev. John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire, have no right or authority to sit, deliberate or act as members of the said Corporation or Board, and thereupon further prays that the said Corporation be by such judgment restrained from acting and proceeding in respect of the duties imposed upon them by the said Act of Incorporation of the 22nd Vic., Chap. 66; and from administering, using, dispensing or disposing of the funds and property of the said Corporation: and be ordered and enjoined not to act in respect of the said duties and powers, and in respect of the said funds and property, until an adequate and sufficient number of members thereof shall have been duly elected in the manner and with the formalities provided by law and by the said last mentioned Act of Incorporation.

And further, that the Respondents, Rev. John Jenkins, Rev. Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, Reverend John MacKerras, William Darling, Esquire, Alexander Mitchell, and John L. Morris, Esquire, be restrained from acting as members of the said Board, and be enjoined not to sit or act as, or perform any of the functions of members of the said Board, unless and until they shall be duly elected members thereof, in the manner, and with the formalities provided by the said Act of Incorporation of the said Board, 22 Vic. chap. 66.

And the Petitioner further prays, that it be ordered, that the said Respondents, and each and all of them do forthwith suspend any and all acts and proceedings in their several capacities respectively; in respect of the administration of the said funds and property, and in respect of all matters in dispute in this cause.

That it be adjudged and declared that the Fund administered by the Corporation, Respondents, amounting to the sum of four hundred and sixty-three thousand, three hundred and seventy-one dollars and fifty-two cents, (\$463,371.52) is a Fund held in Trust by them for the benefit of the Presbyterian Church of Canada, in connection with the Church of Scotland, and for the benefit of the Ministers and Missionaries who retain their connection therewith and who have not ceased to be Ministers thereof, and for no other purpose whatever.

That the said Reverend John Cook, Reverend James C. Muir, and Reverend George Bell, be declared to have ceased to be Members of the Presbyterian Church of Canada, in connection with the Church of Scotland, and not be entitled to any sum of money or benefit from the funds administered by Respondents. That the said Reverend John Fairlie, Reverend W. Morison and Reverend Charles A. Tanner be declared not entitled to receive any sum of money whatever from the

(
s
c
f
m
o
t
b

funds administered by Respondents, and that Respondents be enjoined and ordered not to pay said Reverend John Cook, Reverend James C. Muir, Reverend George Bell, Reverend John Fairlie, Reverend David W. Morrison and Reverend Charles A. Tanner, or any of them, any sum of money whatever from the capital or revenues of the funds administered by them, and further, that the said Corporation Respondents, be adjudged and ordered not to pay to them the said Reverend John Cook, Reverend James C. Muir, Reverend George Bell, Reverend John Fairlie, Reverend David W. Morison, Reverend Charles A. Tanner, or to any other person whomsoever, any sum of money whatever out of the capital or revenues or interest accrued and to accrue on said Fund, under pain of all legal penalties, until such further order shall be made upon the said petition, as to this Honorable Court, or any Judge thereof shall seem meet and expedient. And the said Petitioner hereby declares his readiness to give good and sufficient security, in the manner prescribed by and to the satisfaction of the said Court or of a Judge thereof in the sum of Six Hundred Dollars or any higher sum fixed by the said Court or Judge for the costs and damages which the Respondents may suffer by reason of the issue of said Writ of Injunction, and the said Petitioner hereby offers as such security, James S. Hunter, Notary Public, and Joseph Hickson, Railway Manager, both of the City and District of Montreal, who will justify as to their sufficiency if required, the said Petitioner reserving the right to take such other and further conclusions in the matter, as he may be advised and permitted, the whole with costs of suit and of Exhibits against such of said Respondents as may contest the present action but without costs against such of the Respondents as may declare that they abide the order of the Court, of which costs the undersigned Attorneys pray distraction.

Montreal, 31st December, 1878.

(Signed,) MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioner.

(Signed,) J. J. C. ABBOTT, Q. C.,
" M. M. TAIT,
Of Counsel.

(True Copy.)

30

I, the undersigned, one of the Justices of the Superior Court for Lower Canada, sitting in the District of Montreal, having read the foregoing Petition, and the affidavits and documentary evidence produced in support of the same, and seeing further the offer of the said Petitioner to give good and sufficient security in the manner prescribed by me and to my satisfaction, I do approve of the security offered by Petitioner and do order and prescribe that the said sureties offered to wit:—James S. Hunter, Notary Public, and Joseph Hickson, Railway Manager, both of the City and District of Montreal; do enter into a Bond before me to the

40

extent of Twelve Hundred Dollars for costs and damages which the Respondents may suffer by reason of the Writ of Injunction herein ordered to issue; they then and there justifying as to their sufficiency upon oath; and that thereupon a Writ of Injunction do issue according to the prayer of the said Petition, to summon the Respondents to be and appear before any one of the Honourable Justices of the said Superior Court at Montreal aforesaid, on the thirty-first day of January next, (eighteen hundred and seventy-nine,) to answer the premises, and pending such further order and judgment as may be rendered in this cause, I do hereby order and enjoin the said Corporation, Respondents, and the said Respondents, the Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert 10 Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, John L. Morris, Esquire, Reverend John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire, and each of them forthwith, to suspend any and all acts and proceedings in their several capacities, respectively, in respect of the payment of all sums of money, and of the administration of the funds under the control of the said Corporation, Respondents, and in respect of all other matters in dispute in this cause, under pain of all penalties provided by law.

Montreal, 31st December, 1878.

(Signed),

L. A. JETTÉ.

J.

(True copy).

Hubert L. Houey, & Gendron
P. L. H.

True Copies
Macmaster & Hall Greaves
Attys for Petitioners

Original
5 Brynnes 1882 *P375D* *14*
Exp. Appellate
Mar. 29
In the Privy Council.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH
FOR LOWER CANADA, IN THE PROVINCE
OF QUEBEC, (APPEAL SIDE.) *Continued*

Macmaster
BETWEEN

THE REVEREND ROBERT DOBIE, - - - Appellant.

AND

"BOARD FOR THE MANAGEMENT OF THE TEM-
PORALITIES FUND OF THE PRESBYTERIAN
CHURCH OF CANADA IN CONNECTION WITH
THE CHURCH OF SCOTLAND" ET AL., - - Respondents.

ARGUMENT OF MR. MACMASTER, OF COUNSEL FOR THE APPELLANT.

The Petitioner is by statute a beneficiary under an Act (22 Vic. cap. 66), ^{Introduc-} entitled: "An Act to incorporate the Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," passed by the Parliament of the late Province of Canada. The Respondents have caused this Act to be amended by an Act of the now Province of Quebec (38 Vic. cap. 64) — and by two other Acts—one of the Legislature of Quebec (38 Vic. cap. 62), and the other of the Legislature of Ontario (38 Vic. cap. 75)—each of the latter Acts being entitled: "An Act respecting the Union of certain Presbyterian Churches named therein."

10 The Appellant attacks the constitutionality of the Act 38 Vic. cap. 64 directly; and indirectly that of the two other Provincial Acts.

The Act of the old Province of Canada, 22 Vic. cap. 66, created a corporation for the purpose of holding and administering the funds and property of the Presbyterian Church of Canada in connection with the Church of Scotland for certain specific objects and on certain fundamental conditions, throughout the whole of the heretofore Province of Canada. This Act continued in force without question till 1875, when an application was made to the Legislature of the Province of Quebec for an Act, ostensibly to amend but really to abrogate, its provisions. The object of the amendment, as appears from its preamble and pro-
20 visions, was to modify and repeal the terms of the original Act "with a view to the union" that was then contemplated and agreed upon between the Presbyterian Church of Canada in connection with the Church of Scotland, the Church of the Maritime Provinces in connection with the Church of Scotland, the Pres-

1881

byterian Church of the Lower Provinces, and the Canada Presbyterian Church. In the old Act, 22 Vic. cap. 66, provision is made for the filling in of vacancies, annually occurring in the Board of Management. No such provision is made in the Amending Act. But about the same time, the two union Acts above referred to were obtained, one from the Legislature of Ontario, and the other from the Legislature of Quebec, "with a view to the union" of the said Churches, and also with a view to confiscate property belonging to the Presbyterian Church of Canada in connection with the Church of Scotland, to and for the purposes of "the united Church" to be created, and further with a view of making provision by which property generally might be held, if not under the corporate name of the "Presbyterian Church in Canada," at least in trust for its benefit. The Appellant, a minister and member of the Presbyterian Church of Canada in connection with the Church of Scotland, and a beneficiary under the Act 22 Vic. cap. 66, in conjunction with several other ministers, members and adherents of the last-named Church, objected to the proceedings taken to effect the union, protested by the ministry of a notary (Appeal Book, page 137), and further entered specific protest on the minutes of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland (Appeal, pages 69 and 70) against that said union before its terms were signed by the high contracting parties.

20

The union was effected in accordance with the Provincial Statutes, and thereupon the Appellant instituted the present action, praying that the Board might be restrained from further administration, that its members should be ousted for disqualification, and by reason of the unconstitutionality of the Act continuing them in Office, and that the funds, amounting to about half a million of dollars, under the administration of the Board, should be declared to be the property of the Presbyterian Church of Canada in connection with the Church of Scotland. The Appellant also asks other specific conclusions as appears from his petition.

The defendants pleaded their right of administration, and the legality of 30 the Board in virtue of the Provincial Acts impugned.

The issue.

The real issue raised by the pleadings is as to the constitutionality of the Acts passed by the Provincial Legislatures amending either directly or indirectly the Act 22 Vic. cap. 66.

At the outset it is noteworthy that the only Act passed purporting specifically to amend the Act 22 Vic. cap. 66 is the Act of the Province of Quebec, 38 Vic. cap. 64: the other Acts, 38 Vic. cap. 62 of the Province of Quebec, and 38 Vic. cap. 75 of the Province of Ontario, relate generally to the scheme for carrying out the contemplated union of the four separate Denominations, with the exception of section 8 of the Ontario Act and section 11 of the Quebec Act, 40 which both refer to "a fund called the Temporalities Fund, administered by a Board incorporated by Statute of the heretofore Province of Canada." Defining the issue as closely as possible, Appellant's action attacks the constitutionality of the Acts 38 Vic. cap. 64 of the Province of Quebec, and section 11 of 38 Vic. cap. 62 of that Province; the constitutionality of the three Acts is in issue.

It is somewhat paradoxical that the Petitioner should appear before the Privy Council as an Appellant. He is really the Respondent, as a majority of the Judges constituting the Court that rendered the judgment appealed against, have affirmed his main proposition—declaring the Acts impugned unconstitutional—and the Statute 22 Vic. cap. 66 in force.

Three Judges in Court of Queen's Bench support Appellant's view of the law.

The Appellant submits that the Act 22 Vic. cap. 66 is still in force, and that the Provincial Acts which assume to amend, modify or repeal it, are *ultra vires* of the Legislatures, and unconstitutional.

Four propositions for discussion.

The discussion of these propositions involves the consideration of:

- 10 1o. The circumstances which occasioned the enactment of the Statute 22 Vic. cap. 66 and the object, scope and character of its provisions.
- 2o. The character and powers of the Legislature of the Province of Canada by which the Act was passed.
- 3o. The powers of the Parliament of Canada and of the Legislatures of the Provinces—in Canada—under the British North America Act, 1867, and
- 4o. The Acts of the Legislatures of Quebec and Ontario, impugned directly and indirectly by Appellant.

I.—THE CIRCUMSTANCES WHICH OCCASIONED THE ENACTMENT OF THE STATUTE 22 VIC. CAP. 66, ITS OBJECT, SCOPE AND CHARACTER.

- 20 The circumstances preceding and connected with the enactment of the Statute 22 Vic. cap. 66, have an important bearing on the question in issue. Upon these, to a large extent, depends the determination of whether the subject matter of the Statute can be brought within the pale of "a merely local or private matter in the Province" (of Quebec or Ontario), and whether the Statute itself is susceptible of amendment or repeal by a Legislature whose powers of incorporation are limited only to "Companies with provincial objects."

Appellant's first proposition.

- 30 "No doubt there are certain general principles on which" said Lord Blackburn in *River Wear vs. Adamson* (Law Reports 2, Appeal Cases, House of Lords, page 763) "Courts of Law act in construing instruments in writing, and a Statute is an instrument in writing. In all cases the object is to see what is the intention expressed by the words used, but from the imperfections of language it is impossible to know what that intention is without enquiring further and seeing what the circumstances were with reference to which the words were used, and what was the object, appearing from these circumstances, which the person using them had in view."

"It is allowable and sometimes desirable that the Court which is called upon to interpret a Statute, acquaint itself with the history of the Statute and the circumstances under which it was passed."—*Hardcastle, Construction and effect of Statutory Law*, p. 19.

- 40 The events preceding the Act of Incorporation are thus summarily stated by Mr. Justice Ramsay, dissenting, (Appeal Book, p. 452):

"Briefly stated, the facts are these: Prior to 1875, there existed a religious body known as the Presbyterian Church of Canada in connection with the Church of Scotland. It did not owe its existence to any charter or statute, but it grew

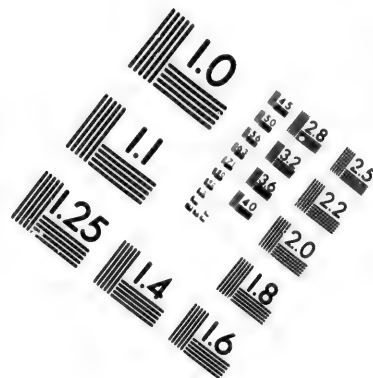
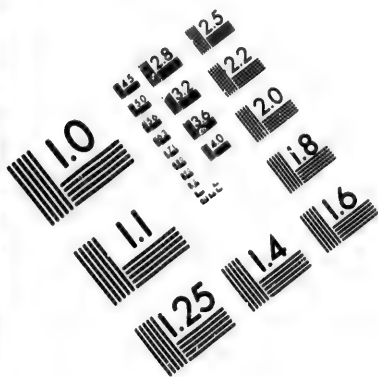
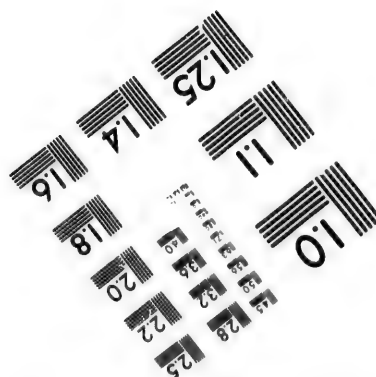
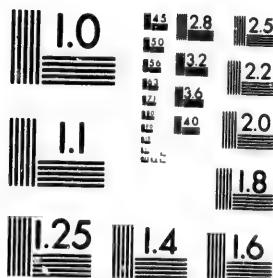


IMAGE EVALUATION TEST TARGET (MT-3)



28
25
22
20

51

"out of the settlement in this country of Presbyterians in communion with the Church of Scotland. But if no statute defined precisely the limits, rights and privileges of this body, numerous statutes acknowledged its existence, and the right of its clergy to share in the lands known as the "Clergy Reserves," was admitted. When, by process of legislation, the share of the clergy of the Church of Scotland in Canada became fixed, an Act of the Legislature of United Canada was obtained (22 Vic. cap. 66) to make provision for the management and holding of certain funds of the Presbyterian Church in connection with the Church of Scotland, 'now held in trust by certain commissioners, hereinafter named, and for the benefit thereof, and also of such other funds as may from time to time be granted, given, bequeathed, or contributed thereto.' The body so incorporated is the Board of Management, the present Respondent."

This statement (as well as Mr. Justice Ramsay's narrative of all "the facts which have given rise to the contestation,") was concurred in by Chief Justice Dorian, who rendered the Judgment of the Court of Appeal:

"The facts, which have given rise to the contestation, have been so clearly explained by my learned brother to my right (Mr. Justice Ramsay) that it is unnecessary for me to refer to them. (Appeal Book, p. 444, line 25.) Mr. Justice Ramsay's brief and correct statement admits of some amplification.

History of
the fund in
dispute:
£127,448
5s. 0d.

The Act of the Imperial Parliament, 31 Geo. III, cap. 31, section 36, made 20 provision for the support and maintenance of a Protestant Clergy in Upper and Lower Canada. Certain of the public lands of the Crown were set apart for this purpose. The Church of England claimed a monopoly of the endowment; but ultimately the claim of the Church of Scotland in Canada to a portion was recognized. The "support and maintenance" were to be provided out of the public lands of the Crown, and these lands were called The "Clergy Reserves."

The Imperial Statute, 16 Vic. cap. 21, authorized the Canadian Parliament to dispose of these "Clergy Reserves" and to invest the proceeds in such manner as would preserve the rights and interests of the Clergy of the Church of England and Scotland in Canada.

30

The Canadian Statute 18 Vic. cap. 2, authorized the sale of the "Clergy Reserves" (lands), and the investment of the proceeds by the Receiver-General of the Province of Canada in two separate funds, one the "Upper Canada Municipalities Fund," the other "Lower Canada Municipalities Fund." Upon these funds the annual stipends of ministers was made the first charge.

Under the Act of the late Province of Canada (18 Vic. cap. 2, sec. 3), the governor was authorized "*with the consent of the parties or bodies severally interested, to commute with the said parties such annual stipends or allowances for the value thereof.*" Section 3 is as follows:

Authority
to commute.

"And whereas it is desirable to remove all semblance of connection between Church and State, and to effect an entire and final disposition of all matters, claims and interests arising out of the Clergy Reserves by as speedy a distribution of their proceeds as may be: Be it therefore enacted that the Governor in Council may, whenever he may deem it expedient, with the consent of the parties and bodies severally interested, commute with the said parties such annual stipend or allowance for the value thereof, to be calculated at the rate of six per cent. per annum upon the probable life of each individual;

"and in the case of the bodies above particularly specified in the second section
 "of this Act, at the actual value of the said allowance at the time of commutation
 "to be calculated at the rate aforesaid; and such commutation shall be paid
 "accordingly out of that one of the Municipal Funds upon which such stipend or
 "or allowance is made chargeable by this Act; Provided always that no com-
 "mutation shall take place but within one year next after the passing of this
 "Act; provided also that in case of commutation with either of the said bodies
 "or denominations, it shall not be lawful for them or either of them to invest
 "the moneys paid for such commutation or any part thereof, in real property of
 10 "any kind whatsoever, under penalty of forfeiting the same to Her Majesty;
 "and that the said Bodies or Denominations shall lay before the Legislature,
 "whenever called on so to do, a statement of the manner in which said moneys
 "shall have been invested or appropriated."

The Government of the day communicated with the Synod of the Presby-
 terian Church of Canada in connection with the Church of Scotland, with a view
 to giving effect to this section. A meeting of Synod was called, and the matter
 submitted to the beneficiaries. The interest in the fund was personal to each
 minister.

The appendix to the Journals of the Legislative Assembly of Canada, for
 20 the year 1856, establishes that the Government actuary estimated that the present
 Petitioner, Appellant, was entitled personally to receive an annuity of £150 per
 annum, on the amount of capital apportioned to him, namely £2,200.

The Synod met and decreed as follows: (Appeal Book, pages 161 and 162.)

"The Synod having heard the report of the Committee appointed by the
 "Synod to watch over the interests of the Church, in so far as these might be
 "affected by the action of the Legislature on the Clergy Reserves, and, also the
 "verbal reports of such members of the Committee as had been in communication
 "with members of the Government on the subject—and, having seriously and
 "maturely considered that clause of the Clergy Reserves Act, lately passed by
 30 "the Provincial Parliament at its present session, by which His Excellency the
 "Governor in Council is authorized, with the consent of the parties interested,
 "to commute the salaries or allowances of ministers chargeable for life or during
 "their incumbencies on the Clergy Reserves fund, for their value in money:—
 "Resolved,

"1st. That it is desirable that such commutation, if upon fair and liberal
 "terms, should be effected; and that the Reverend Alexander Mathieson, D.D.,
 "of Montreal, the Rev. John Cook, D.D., of Quebec, Hugh Allan, Esq., of Mont-
 "real, John Thompson, Esq., of Quebec, and the Hon. Thomas McKay, of Ottawa
 "City, be the Synod's Commissioners, with full power to give the formal sanction
 40 "of the Synod to such commutation as they shall approve, the said Commis-
 "sioners being hereby instructed to use their best exertions to obtain as liberal
 "terms as possible; the Rev. Dr. Cook to be convener; three to be a quorum;
 "the decision of the majority to be final, and their formal acts valid; but that
 "such formal sanction of the Synod shall not be given except in the case of min-
 "isters who have also individually given them, the said Commissioners, power
 "and authority to act for them in the matter to grant acquittance to the Govern-
 "ment for their claims to salary to which the faith of the Crown is pledged; and

Action of
Synod.

Fund-
amental
conditions.

"to join all sums so obtained into one fund, which shall be held by them till the next meeting of Synod, by which all further regulations shall be made; the following, however, to be a fundamental principle which it shall not be competent for the Synod at any time to alter, unless with the consent of the ministers granting such power and authority; that the interest of the fund shall be devoted in the first instance, to the payment of £112 10s. 0d. each, and that the next claim to be settled, if the fund shall admit, and as soon as it shall admit of it, to the £112 10s. 0d. be that of the ministers now on the Synod's roll, and who have been put on the Synod's roll since the 9th May, 1853; and also, that it shall be considered a fundamental principle, that all persons who have a claim to such benefits, shall be ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and that they shall cease to have any claim on, or be entitled to any share of said commutation fund whenever they shall cease to be ministers in connection with the said Church.

"2nd. That so soon as said commutation shall have been decided upon and agreed to by the said Commissioners, the Rev. John Cook, D.D., of Quebec, shall be fully empowered and authorized, and this Synod hereby delegate to the said Rev. Dr. John Cook full power and authority to endorse and assent to the several powers of attorney from the individual parties on behalf of the said Synod, and in their name, and as their act and deed, as evidencing their assent thereto.

"3rd. That all ministers be, and they are hereby enjoined and entreated, (as to a measure by which, under Providence, *not only their own present interests will be secured, but a permanent endowment for the maintenance and extension of religious ordinances in the Church*) to grant such authority, in the fullest manner, thankful to Almighty God that a way so easy lies open to them for conferring so important a benefit on the Church.

"4th. That the aforesaid Commissioners be a Committee to take the necessary steps to get *an Act of Incorporation for the management of the General Fund*, so to be obtained; the aforesaid Commissioners to constitute the said Corporation till the next meeting of Synod, when four more members shall be added by the Synod.

"The Synod ordered the minutes of this meeting to be printed, and a copy sent to each minister as soon as possible, and they further instructed their Commissioners, named above, to address a circular to the several ministers, showing them the importance of commuting upon the plan agreed to at this meeting, and giving them full information on the subject."

Subject to these conditions and "fundamental principles," the Appellant and 72 other ministers surrendered their personal claims upon the Government. Commutation and settlement were effected. The Canadian Government paid to the Commissioners the sum of £127,448 5s. 0d. (Appeal Book, page 165.)

The ministers interested in the fund resided throughout the then Province of Canada, previously known as Upper Canada and Lower Canada, and now known as the Provinces of Ontario and Quebec.

The foregoing statement of facts is admitted by the parties (See admissions in Appeal Book, pp. 154 to 156, inclusive.)

Pursuant to instructions the Commissioners applied for "An Act of Incorporation for the management of the general fund,"—the Act 22 Vic. cap. 66.

- By the Act 22 Vic. cap. 66, section 1, it is declared that the Corporation The Act
 created a "Board for the Management of the Temporalities Fund of the Pres- 22 Vic.
 byterian Church of Canada in connection with the Church of Scotland,"..... cap. 66.
 "shall henceforth have, hold, enjoy and possess in trust, for the said Church,
 "and for the aforesaid firstly hereinabove specified uses, all moneys, debentures,
 "bonds, bank or other stocks and securities, which are now held by the
 "said hereinbefore named parties as Trustees or Commissioners of the said Church,
 "in trust for the said Church; but *such holding is subject always to the special*
 "condition that the annual interest and revenues of the said moneys and funds
 10 "now in their hands shall be and remain charged and subject, as well as regards
 "the character as the extent and duration thereof, to the several annual charges
 "in favour of the several ministers and parties severally entitled thereto, of the
 "several amounts and respective characters and durations as the same were constituted
 "and declared at the formation of the said funds and the joining the
 "same into one fund: And the said Board shall also have power without license
 "of mortmain or *lettres d'amortissement*, to have, hold, receive, take, enjoy and
 "possess by gift, voluntary conveyance, devise, bequest or otherwise, to them
 "and their successors, *any real or personal estate* to and for the use of the said
 "Board, for any or either of the purposes aforesaid; Provided always that any
 20 "real estate which may be so acquired by said Board shall be sold within two
 "years from the date of such acquisition thereof by the said Corporation, and the
 "proceeds thereof invested in the public securities of the Province, municipal
 "debentures, stock of the chartered banks or other securities, for the uses aforesaid;
 "and provided further that any such real estate which shall not be sold
 "and alienated within two years from the time when the same is received by the
 "Corporation, shall revert to the party from whom the same came, or to his or
 "her heirs, devisees or other representatives; and provided also that no will
 "shall be valid and sufficient to pass any real or personal estate to the said Corporation
 "unless such will shall have been executed by the testator six calendar
 30 "months prior to his decease. And such Board and their successors shall moreover
 "have power to sell, dispose of, exchange, alter, vary or renew any of the
 "investments heretofore made by them or hereafter to be made, of the said funds
 "or such other funds, or any of them, and to reinvest any moneys arising therefrom,
 "and acquittances, conveyances, transfers, releases, receipts and discharges,
 "to make and give as occasion may demand."

This portion of the section is quoted to call attention to the special reference to the statutory affirmation of "the special condition" contained in the resolution of Synod herein cited—(Appeal Book, pp. 161 and 162): "as the same were constituted and declared *at the formation of the said funds*, and the joining of
 40 "the same into one fund" and to show the powers of the corporation.

The section is specially noteworthy as showing the extent of the power of the corporation "to have, hold, receive, take, enjoy and possess"—in the most unrestricted manner—*any real or personal estate*, in any part of Canada, and to sell the same. The Act is as general as to the acquisition and investment of property in Canada as it could have been made if enacted by the Imperial Parliament. There is no limit—as is usual in such Acts in the Colonies—to the value or locus of the real estate it might acquire, provided it be sold by the Board within

two years after its acquisition. Such are the *powers* or "civil rights" of this corporation as distinguished from the actual property it might have acquired.

22 Vic. cap.
66, confers
"civil
rights,"
throughout
whole of
Province of
Canada.

It is contended by Appellant that these *powers* or *civil rights*—extending as they unquestionably did over the domain of the whole of old Canada—did not become severed by the Act of Confederation into "civil rights" that could in any sense be deemed provincial. The Appellant submits that after, as well as before, the British North America Act, 1867, the *power* of the corporation created by the Act 22 Vic. cap. 66, to acquire, hold and sell real estate in both the Provinces of Ontario and Quebec was perfect, that neither provincial legislature could destroy that power, and that what one legislature could not do by itself it could 10 not do by invoking the aid of another body equally powerless; that, in a word, the powers of provincial legislatures are not co-operative as between provinces, but distributed between the provincial legislatures and the Dominion parliament; and that what is beyond the competency of any one legislature enures to Parliament.

The objects
of the Act,
22 Vic. cap.
66.

To return to the Preamble, it is clear that the *objects*—"purposes"—of incorporation are twofold:

1st. To hold and administer the fund obtained from the commutation of the claims of ministers on the Clergy Reserves in trust for the Presbyterian Church of Canada in connection with the Church of Scotland; and for the application of 20 *the revenues* (not the capital) "for the encouragement and support of ministers "and missionaries of the said Church, and for the augmentation of their stipends, "and towards making a provision for those who may be incapacitated by age or "infirmary."

2nd With "other funds" to erect and maintain and endow Churches and manses in connection with the Church, and to aid young men to study for the ministry."

The preamble is in these words:

"Whereas it hath been represented to the Legislature of this Province that "it is desirable that provision should be made for the management and holding 30 "of certain funds of the Presbyterian Church of Canada in connection with the "Church of Scotland, now held in trust by certain commissioners hereinafter "named, on behalf of the said Church, and for the benefit thereof, and also of "such other funds as may from time to time be granted, given, bequeathed or "contributed in addition thereto;

"And whereas the said funds are so held in trust, and the revenues thereof "are to be appropriated for the encouragement and support of ministers and "missionaries of the said Church, and for the augmentation of their stipends "and towards making a provision for those who may be incapacitated by age or 40 "infirmary;

"And whereas, secondly, when and if it shall so please the said Church, and "so soon as other funds hereafter shall be contributed, subscribed, or paid in "from any source for the purpose to the Corporation hereby erected, it is desired "that such other funds shall be appropriated for granting aid towards the erection "and maintenance and endowment of churches and manses in connection with "the said Church, and the aiding of young men to study for the ministry; and "whereas the erection of a corporation will best promote the purposes aforesaid."

Section 1. Declares the Corporation created "for the purposes herein afore-said in the preamble recited."

Now are these "purposes" or objects in any sense provincial? The Domain of the Church in Canada at the time the Act was passed was coextensive with the limits of the Province of the old Canada. The Synod of the Presbyterian Church of Canada in connection with the Church of Scotland comprised all the ministers of the Church in the Province of Canada, from Lower Canada as well as from Upper Canada. The revenues of the fund were appropriated "for the encouragement and support of ministers and missionaries," whether these came from Lower Canada or Upper Canada. Nor was there any restriction as to the residence or field of labour of the minister or missionary. The *purpose* was that the minister or missionary should be supported and maintained, at home or abroad,—there is no restriction—in Canada or elsewhere. There is no statutory bound to the ministerial vineyard. The broad terms of the Act rebut the idea of restriction to "provincial objects," or limits, nay, even, of restriction to the limits of Canada.

Ultra Provincial purposes and powers.

Again, the second object of the Act—the power to erect and maintain churches and manse—clearly implies the *power*,—the *civil right*—to erect, maintain and endow churches in any part of Canada or—so far as any restriction by the Parliament of Canada is concerned—elsewhere. This power the Board had unmistakably, and its natural corollary, the *power* to acquire and dispose of real estate.

Where Synod meets.

The powers conferred by this Statute are not restricted even to Canada, much less to any Province.

Further, it will be observed (section 6) that :

"The said Corporation shall hold their meetings at such place or places within this Province (Canada) as they shall from time to time direct and appoint."

The meetings were held sometimes in Upper Canada, sometimes in Lower, according as the Synod met in one of the Provinces or the other.

The following is an extract from the evidence of Mr. James Croil, the secretary of the Board, Respondents. (Appeal Book, p. 230, lines 18 to 35.):

"Q. Were there not meetings of the Board held in Ontario and Quebec at the places where the Synod happened to meet, that is, prior to the 15th June, 1875?

"A. Yes; meetings had been held previous to that date, but none have been held since.

"Q. Prior to the said 15th June where were the elections held to fill vacancies occurring in the Board?

"A. Members of the Board were appointed by the Synod.

"Q. In what places was the Synod held?

"A. In different places throughout Upper and Lower Canada.

"Q. Did the meetings alternate between Upper and Lower Canada?

"A. They did not alternate, the majority of meetings were held in Upper Canada.

"Q. The vacancies on the Board as they occurred were filled at these different meetings of Synod held at these different places, were they not?

"A. These elections to fill vacancies on the Board were in virtue of the terms of the Act of Incorporation of the Board, 22nd Victoria, 1858."

The fund held and administered by the corporation, Respondents, had no fixed *situs* in either Upper or Lower Canada. The investments were in the discretion of the Board, as was also its place of meeting. As the Synod nominated persons to fill vacancies occurring in the Board its meetings were generally ancillary to those of the Synod. The Synod itself was nomadic—meeting sometimes in Upper Canada, sometimes in Lower Canada, not stately in either, but most frequently in Upper Canada.

Synod
powerless
to effect
Statute.

Some confusion has been introduced in this case by the pretension of the Respondents—that the “Synod authorized the union resulting in the Presbyterian Church in Canada,” and the legislation that the Appellant attacks. In answer it is sufficient to say—that the acts of the Synod relied on were in opposition to the protests of Appellant and others (Appeal Book, p. 137 and pp. 69 and 70), and that in any case the Synod had no powers as regards the Board, Respondents, saving those specified in the Act itself. Even assuming that the Synod had the power that the Respondents claim for it, which is not admitted, it could only be rendered effective on obtaining appropriate legislative sanction. The functions of the Synod were *ecclesiastical*, not *civil*. Whatever its powers may be, they are ineffectual to vary an Act of Parliament, to create legislative competency where it does not exist, or to “discipline” an erring brother out of his “civil rights.”

20

The Appellant relies upon the Act of Parliament consecrating the conditions upon which he renounced his personal rights in order to create a perpetual endowment for his Church.

Appellant challenges in this suit the action of a corporation, and of its members; the Respondents must rely for answer on the Acts of the Legislature that gave them the existence and authority that are impugned.

From these considerations it is obvious :

1o. That the intention of the founders of the Temporalities' Fund was to create a “permanent endowment upon certain fundamental conditions for the maintenance and extension of religious ordinances in the Church”—in connection with the Church of Scotland. (Appeal Book, page 162, line 21.)

2. That the Legislature in the fullest and most general terms enabled and empowered the Corporation to effect these objects.

II.—THE CHARACTER AND POWER OF THE LEGISLATURE OF THE PROVINCE OF CANADA.

Appellant's
second
proposition.

The late Province of Canada was created by the Imperial Statute 3 & 4 Vic. cap. 35, entitled “An Act to reunite the Provinces of Upper and Lower Canada and for the government of Canada.” Under the provisions of this Act a legislative union existed between the old Provinces of Upper and Lower Canada. The United Province became “one Province for the purposes of executive government and legislation.”

The powers to legislate are described in broad and general terms:

“Within the Province of Canada Her Majesty shall have power by and with ‘the advice and consent of the (said) Legislative Council and Assembly ‘to make ‘laws for the peace, welfare and good government of the Province of Canada.’ (3 & 4 Vic. cap. 35, sec. 3.)

SECTION 3. "And be it enacted that from and after the re-union of the said
 "two Provinces, there shall be within the Province of Canada one Legislative
 "Council and one Assembly, to be severally constituted and composed in the
 "manner hereinafter prescribed, which shall be called 'The Legislative Council
 "and Assembly of Canada,' and that within the Province of Canada Her Majesty
 "shall have power, by and with the advice and consent of the said Legislative
 "Council and Assembly, to make laws for the peace, welfare and good govern-
 "ment of the Province of Canada, such laws not being repugnant to this Act, or
 "to such parts of the said Act passed in the thirty-first year of the reign of his
 10 "said late Majesty, as are not hereby repealed, or to any Act of Parliament made
 "or to be made, and not hereby repealed, which does or shall by express enact-
 "ment or necessary intendment, extend to the Provinces of Upper and Lower
 "Canada, or to either of them, or to the Province of Canada; and that all such
 "laws being passed by the said Legislative Council and Assembly, and assented
 "to by Her Majesty, or assented to in Her Majesty's name by the Governor of
 "the Province of Canada, shall be valid and binding to all intents and purposes
 "within the Province of Canada." (3 & 4 Vic. cap. 35, sec. 3.)

Powers of
 Parliament
 of old
 Province of
 Canada.

Singularly enough the only restriction to Colonial legislation is a clause—
 (see section 42)—providing that any Bill passed in Canada "to vary or repeal
 20 "any of the several provisions contained in the Act 31 Geo. 3 cap. 31, respecting
 "the allotment and appropriation of lands for the support of the Protestant clergy
 "within the Province of Canada," shall not be assented to by Her Majesty until
 30 days after such Bill shall have been laid before both Houses of the Imperial
 Parliament, and shall not be assented to by Her Majesty in the event of objec-
 tion by either House of Parliament within such 30 days.

SECTION 42. "And be it enacted that whenever any bill or bills shall be
 "passed by the Legislative Council and Assembly of the Province of Canada,
 "containing any provisions to vary or repeal any of the provisions now in force,
 "contained in an Act of the Parliament of Great Britain, passed in the fourteenth
 30 "year of the reign of his late Majesty King George the Third, entitled 'An Act
 "for making more effectual provision for the government of the Province of Que-
 "bec in North America,' or in the aforesaid Acts of Parliament passed in the
 "thirty-first year of the same reign, respecting the accustomed dues and rights of
 "the Clergy of the Church of Rome; or to vary or repeal any of the several pro-
 "visions contained in the said last-mentioned Act respecting the allotment and
 "appropriation of lands for the support of the Protestant clergy within the Pro-
 "vince of Canada, or respecting the constituting, erecting or endowing of parson-
 "ages or rectories within the Province of Canada, or respecting the presentation
 "of incumbents or ministers of the same, or respecting the tenure on which such
 40 "incumbents or ministers shall hold and enjoy the same; and also that when-
 "ever any bill or bills shall be passed containing any provisions which shall in
 "any manner relate to or affect the enjoyment or exercise of any form or mode
 "of religious worship, or shall impose or create any penalties, burdens, disabili-
 "ties, or disqualifications in respect of the same, or shall in any manner relate to
 "or affect the payment, recovery and enjoyment of any of the accustomed dues
 "or rights hereinbefore mentioned, or shall in any manner relate to the granting,
 "imposing or recovering of any other dues or stipends or emoluments to be paid

Rights of
 Protestant
 clergy con-
 served
 under union
 Act, 1840.

"to or for the use of any minister, priest, ecclesiastic or teacher, according to
 "any form or mode of religious worship in respect of his said office or function;
 "or shall in any manner relate to or affect the establishment or discipline of the
 "United Church of England and Ireland among the members thereof within the
 "said Province; or shall in any manner relate to or affect Her Majesty's prero-
 "gative touching the granting of waste lands of the Crown within the said Pro-
 "vince; every such bill or bills shall previously to Her Majesty's assent thereto
 "be laid before both Houses of Parliament of the United Kingdom of Great Bri-
 "tain and Ireland; and that it shall not be lawful for Her Majesty to signify
 "her assent to any such bill or bills until thirty days after the same shall have 10
 "been laid before the said Houses, or to assent to any such bill or bills in case
 "either House of Parliament shall, within the said thirty days, address Her Ma-
 "jesty to withhold Her assent from any such bill or bills, and that no such bill
 "shall be valid or effectual to any of the said purposes within the said Province
 "of Canada unless the Legislative Council and Assembly shall, in the Session in
 "which the same shall have been passed by them, have presented to the Gover-
 "nor of the said Province an address or addresses specifying that such bill or
 "bills contain provisions for some of the purposes hereinbefore specially described,
 "and desiring that, in order to give effect to the same, such bill or bills may be
 "transmitted to England without delay for the purpose of its being laid before 20
 "Parliament previously to the signification of Her Majesty's assent thereto."

Rights of
 clergy of
 Church of
 Scotland
 conserved.

According to section 56 of the Union Act: "Payments to be made to the
 "Clergy of the United Church of England and Ireland and to "the *Clergy of*
 "*the Church of Scotland.*" . . . pursuant to any law or usage whereby such
 "payments before or at the time of passing this Act were or are legally or
 "usually paid out of the public or Crown revenue of either of the Provinces of
 "Upper and Lower Canada shall form the third charge upon the said Consolida-
 "ted Revenue Fund"—of Canada—the first charge being "expense of collection,"
 and the second "interest of debt."

The sections cited from the Union Act 1840 show that though the Parlia- 30
 ment of Canada had plenary powers of legislation in all matters "for the peace,
 welfare and good government of Canada,"—there was reserved (sec. 42) the protec-
 tion of Imperial supervision in regard to any Bill assuming to "vary or repeal"
 any of the provisions of the statute (31 Geo. 3, cap. 31, sec. 36) making appropria-
 tions of land for the support of "a Protestant clergy"; and the further guaran-
 tee (sec. 56) that the stipends of ministers of the churches of England and
 Ireland (for the payment of which the faith of the Crown was pledged) should
 form the third charge on the Consolidated Revenue Fund.

Of the Acts passed by the late Province of Canada some were either expressly
 or by implication applicable to Lower Canada only, and some to Upper Canada 40
 only. It is clear that the Act 22 Vic., cap. 66 was intended to apply to the
 whole Province of Canada.

III. — POWERS OF THE PARLIAMENT OF CANADA AND OF THE PROVINCIAL LEGISLATURES IN CANADA UNDER THE BRITISH NORTH AMERICA ACT.

The Province of Canada was governed under the terms of the Union Act (3 and 4 Vic., cap. 35) from 1841 till 1867, when the Province of Canada and the Provinces of Nova Scotia and New Brunswick were federally united into one Dominion under the name of "Canada." Nova Scotia and New Brunswick entered the Confederation as separate provinces. The "Province of Canada," entered the Confederation as two provinces, under the names of Ontario and Quebec, in virtue of section 6 of the Confederation Act.

Appellant's
third
proposition.

Powers of
Dominion
Parliament
and of the
Provinces.

- 10 "The parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper and Lower Canada shall be deemed to be severed, and shall form two separate provinces. "The part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and the part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec."

The distribution of legislative powers in Canada and in the Provinces are regulated by sections 91 to 95 of the British North America Act, 1867; 37 Vic. cap. 3.

The powers of the Parliament are specified in section 91:

- 20 "It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say:
- 30 1. The public debt and property.
2. The regulation of trade and commerce.
3. The raising of money by any mode or system of taxation.
4. The borrowing of money on the public credit.
5. Postal service.
6. The census and statistics.
7. Militia, military and naval service, and defence.
8. The fixing of and providing for the salaries and allowances of civil and other officers of the government of Canada.
9. Beacons, buoys, lighthouses and Sable Island.
10. Navigation and shipping.
40 11. Quarantine, and the establishment and maintenance of marine hospitals.
12. Sea coast and Inland fisheries.
13. Ferries between a Province and any British or Foreign country or between two Provinces.
14. Currency and coinage.

15. Banking, incorporation of banks.
16. Savings banks.
17. Weights and measures.
18. Bills of exchange and promissory notes.
19. Interest.
20. Legal tender.
21. Bankruptcy and insolvency.
22. Patents of invention and discovery.
23. Copyrights.
24. Indians and lands reserved for Indians. 10
25. Naturalization and aliens.
26. Marriage and divorce.
27. The criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters.
28. The establishment, maintenance and management of penitentiaries.
29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this act assigned exclusively to the legislatures of the Provinces.

And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class 20 of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

The powers of the Provincial Legislatures are specified in section 92 :

Provincial
powers.

In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say :

1. The amendment from time to time, notwithstanding anything in this Act, of the constitution of the Province, except as regards the office of Lieutenant-Governor.
2. Direct taxation within the Provinces in order to the raising of a revenue for provincial purposes. 30
3. The borrowing of money on the sole credit of the province.
4. The establishment and tenure of provincial officers and the appointment and payment of provincial officers.
5. The management and sale of the public lands belonging to the province, and of the timber and wood thereon.
6. The establishment, maintenance and management of public and reformatory prisons in and for the province.
7. The establishment, maintenance and management of hospitals, asylums, 40 charities and eleemosynary institutions in and for the province, other than marine hospitals.
8. Municipal institutions in the Province.
9. Shop, saloon, tavern, auctioneer and other licenses in order to the raising of a revenue for provincial, local or municipal purposes.

10. Local works and undertakings, other than such as are of the following classes :

- a. Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces or extending beyond the limits of the Provinces.
- b. Lines of steamships between the Province and any British or Foreign country.
- c. Such works as, although wholly situate within the province, are before or after their execution declared by the parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces.
11. The incorporation of companies with provincial objects.
12. The solemnization of marriage in the province.
13. Property and civil rights in the province.
14. The administration of justice in the province, including the constitution, organization and maintenance of provincial courts both of civil and criminal jurisdiction, and including procedure in civil matters in those courts.
15. The imposition of panishment by fine, penalty, or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section.
16. Generally all matters of a merely local or private nature in the province.

The Parliament of Canada in the most comprehensive terms is empowered "to make laws for the peace, order and good government of Canada." Then a number of examples of the "exclusive legislative authority of the Parliament of Canada" are given. These special examples are given not to limit the powers of the federal legislature but "for greater certainty, but not so as to restrict the generality of the foregoing terms of this section."

30 Upon these sections Lord Selborne (the present Lord Chancellor) delivered the judgment of Her Majesty's Judicial Committee in the case of *The Union St. Jacques de Montréal vs. Belisle*, 8th July, 1874. He said : Lord Selborne's opinion.

"The scheme of the 91st and 92nd sections is this. By the 91st section "some matters—and their Lordships may do well to assume for the argument's "sake that they are all matters except those afterwards dealt with by the 92nd "section—their Lordships do not decide it, but for the argument's sake they "will assume it; certain matters being, upon that assumption, all those which "are not mentioned in the 92nd section, are reserved for the exclusive legisla- "tion of the Parliament of Canada, called the Dominion Parliament: but beyond "controversy there are certain other matters not only not reserved for the Do- "minion Parliament but assigned to the exclusive power and competency of the "Provincial Legislature in each Province. Among those the last is thus ex- "pressed: 'Generally all matters of a merely local or private nature in the "Province.'"

(*L'Union St. Jacques de Montréal vs. Belisle*. VI. Law Reports, Privy Council Appeal Cases, p. 35.)

Sir James
W. Colville's
opinion.

Later—on the 5th of March, 1875—Her Majesty's Judicial Committee rendered judgment in the case of *Dow vs. Black*. In this case the Privy Council formally declared that "all matters"—as Lord Selborne said in the case of *L'Union St. Jacques vs. Belisle*—"their Lordships would do well to assume"—"not mentioned in the 92nd section are reserved for the exclusive legislation of the Parliament of Canada called the Dominion Parliament."

Sir James W. Colville in delivering the judgment of Her Majesty's Judicial Committee, said :

"Sections 91 and 92 purport to make a distribution of legislative powers between the Parliament of Canada and the Provincial Legislatures, section 91 10 giving a general power of legislation to the Parliament of Canada, subject only to the exception of such matters as by section 92 were made the subjects upon which the Provincial Legislatures were exclusively to legislate." (VI. Law Reports, Privy Council Appeals, p. 280.)

It will be observed that the powers conferred in general terms upon the Parliament of Canada by the British North America Act 1867—33 Vic. cap. 3, sec. 91—"to make laws for the peace, order and good government of Canada," are expressed in almost precisely the same phraseology as those conferred upon the Parliament of the old Province of Canada by the Union Act (3 and 4 Vic. cap. 35, sec. 3) : "to make laws for the peace, welfare and good government of 20 the Province of Canada."

The authority is the same in each, saving only that certain "classes of subjects" are, "by this Confederation Act exclusively assigned to the Legislatures of the Provinces." These "classes" constitute the exception mentioned by Sir James W. Colville in the case of *Dow and Black* cited above.

A high authority—the late Chief-Justice Harrison, of Ontario—said :

Chief
Justice
Harrison's
opinion.

"The great distinction between sec. 91 and sec. 92 is, that while in the former the subjects enumerated are only designed as *examples* of exclusive legislative powers, in the latter the exclusive legislative powers appear to be "all enumerated." *Parsons vs. the Citizen's Insurance Co.*, 43 Upper Canada 30 Queen's Bench Rep., p. 261.

The criterion of Dominion power is found in the general authorization "to make laws for the peace, order and good government of Canada" : the criterion of provincial power is found in the general authorization to legislate exclusively in "all matters of a merely local or private nature in the province."

The decisions in the Privy Council in the cases of *L'Union St. Jacques de Montréal* and *Bélisle* and also in *Dow and Black* above cited, were arrived at by the application of these standards.

Among the classes of subjects exclusively assigned to the provincial legislatures are :

The three
sections
relied on by
Respondents

No. 11. The Incorporation of Companies with provincial objects.

No. 13. Property and Civil rights in the Province.

No. 16. Generally all matters of a merely local or private nature in the Province.

It is argued by Respondents that the Acts impugned by the Appellants fall within the category of sub-sections 11, 13, and 16 of section 92.

IV.—THE ACTS IMPUGNED BY APPELLANT'S ACTION.

Appellants' action directly attacks the Act of the Legislature of Quebec 38 Vic., cap. 64, which assumes to amend the Act 22 Vic., cap. 66, incorporating the Board Respondents; and indirectly clause 11 of the Act 38 Vic., cap. 52, of Quebec. Upon the issue on these points also depends the constitutionality of the corresponding clause 8 in the Act 38 Vic., cap. 75, of Ontario.

Appellant's
fourth
proposition.

The Acts
impugned.

Though the Act of the old Province of Canada had away over the entire Province of old Canada, it is noteworthy that the only Act specially passed to amend it was enacted in the Province of Quebec. No similar Act was passed in the Province of Ontario.

There were, however two other Acts passed about the same time, one in the Province of Quebec 38 Vic. cap. 62, entitled: "An Act respecting the union of certain Presbyterian churches therein named"; and one in the Province of Ontario, 38 Vic. cap. 75, under the same title.

The contents of these Acts have been succinctly epitomized by Mr. Justice Ramsay (Appeal Book, pp. 452-454), and as Mr. Justice Ramsay's exposition of the facts that gave rise to the contestation has been approved by Chief Justice Dorian, it is convenient to make an extract from them:

"This Act (22 Vic. cap. 66) being still in force, in 1874 numerous clergymen and others, members of different Presbyterian Churches in Canada, deemed it desirable to unite their ecclesiastical fortunes and henceforward to form one body, to be called 'The Presbyterian Church in Canada.' Nothing could be more lawful or more praiseworthy than the attempt to sink minor differences of opinion in order to attain greater efficiency, but we have not to decide as to motives and intentions. Our duty is deliberately and coldly to decide a question of law. Application was made almost simultaneously to the Legislatures of Ontario and Quebec for authority to give effect to this determination, and to enable the new body to deal with the property of the Churches so united. An Act of the Ontario Legislature (38 Vic., cap. 75) was passed, the preamble of which sets up

Judge Ramsay's view of the constitutional question.

that:—
"Whereas the Canada Presbyterian Church, the Presbyterian Church of Canada in connection with the Church of Scotland, the Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces, have severally agreed to unite together and form one body or denomination of Christians, under the name of 'The Presbyterian Church in Canada;' and the moderators of the General Assembly of the Canada Presbyterian Church, and of the Synods of the Presbyterian Church of Canada in connection with the Church of Scotland, and the Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces, respectively, by and with the consent of the said General Assembly and Synods, have by their petitions, stating such agreement to unite as aforesaid, prayed that for the furtherance of this their purpose, and to remove any obstructions to such union which may arise out of the present form and designation of the several Trusts or Acts of incorporation by which the property of the said Churches, and of the colleges and congregations connected with the said Churches, or any of them respectively, are held and administered or otherwise,

"certain legislative provisions may be made in reference to the property of the said churches, colleges and congregations, situate within the Province of Ontario and other matters affecting the same *in view of the said union.*"

"The first section then vests all the property of the different Churches so united in the united body under the name of 'The Presbyterian Church in Canada.' Then come reservations and modifications of certain rights, and then by section 4 certain legislation in Ontario respecting the property of religious institutions is made applicable to the various congregations in Ontario in communion with the Presbyterian Church in Canada. Section 5 declares that all the property, real and personal, belonging to or held in trust for the use of any college or educational or other institution, or for any trust in connection with any of the said Churches or religious bodies, either generally or for any special purpose or object, shall, from the time the said contemplated union takes place, and thenceforth, belong to and be held in trust for and to the use, in like manner, of 'The Presbyterian Church in Canada.' Section 7 then deals specially with Knox College and Queen's College, situate in Ontario, and with 'The Presbyterian College' and with 'Morrin College,' situate in the Province of Quebec. Section 8 deals with the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland, 'administered by a Board incorporated by statute of the heretofore Province of Canada.' Section 9 deals with the 20 'Widows' and Orphans' Fund of 'The Canada Presbyterian Church' and 'The Presbyterian Church of Canada in connection with the Church of Scotland.' Section 10 authorizes the new body to take gifts, devises and bequests; and lastly, section 11 declares that 'the union of the said churches shall be held to take place so soon as the articles of the said union shall have been signed by the moderators of the said respective Churches.'

"The legislation in the Province of Quebec took the form of two Acts, 38 Vic. cap. 62 and 64, the former respecting the union of certain Presbyterian Churches; the latter is styled 'An Act to amend the Act intituled 'An Act to incorporate the Board of Management of the Temporalities Fund of the Presbyterian Church 30 of Canada in connection with the Church of Scotland.'"

"Cap. 62 of the 38 Vic., Quebec, with the exception of the section relating to the Temporalities Fund, is substantially the same as the Ontario Act 38 Vic. cap 74. One or two differences it may, however, be well at once to note. The Ontario Act bestows all the above mentioned privileges on 'The Presbyterian Church in Canada;' while the Act of Quebec bestows them on the body so named, 'or any other name the said Church may adopt.' The Quebec Act declares that the union of the four Churches is to take place from the publication of a notice in the Quebec *Gazette* to the effect that the articles of union have been signed by the moderators of the said respective Churches. The 40 Quebec Act has also a section which, harmless in itself, is suggestive of the utmost confusion of ideas. It is as follows:—"In so far as it has authority to do so, the Legislature of the Province of Quebec hereby authorizes the Dominion Legislature, and the several Legislatures of the other Provinces to pass such laws as will recognize and approve of such union throughout and within their respective jurisdiction."

"The other of the Acts of Quebec can hardly be called an amendment of the former Act of the old Province of Canada, for it transfers almost the whole of the Temporalities Fund over to the new Church, and confides its management to a Board constituted in a manner entirely different from the Board under the old Act."

It is evident that the parties that procured the Act from the Quebec Legislature amending the Temporalities Act had grave misgivings about the power of that Legislature to make amendment. A flanking clause was inserted in each of these Acts to make the doubtful transfer of the Temporalities Fund complete.

It was not deemed sufficient to specially amend the Act 22 Vic. cap. 66, by the provision of 38 Vic. cap. 64, but the proceeding was bolstered up by the following clauses.

These flanking clauses are worthy of comparison :

Clause 11 of the Act 38 Vic. cap. 62, Quebec, being "An Act respecting the Union of certain Presbyterian Churches named therein." The flanking clauses.

"Whereas the ministers of the said Presbyterian Church of Canada in connection with the Church of Scotland are entitled to receive incomes from a fund called the Temporalities Fund, administered by a Board, incorporated by Statute of the heretofore Province of Canada, and it is proposed to preserve to them, and to their successors, even if the congregations over which they preside do not enter into the union, the income which they derive from the said fund : it is therefore enacted that the present members of the said Board shall continue in office and manage the said fund on behalf of the said ministers now deriving revenue therefrom, and the income to said ministers shall be continued to them and to their successors as aforesaid, so long as such Presbyterian ministers are in good standing in the Dominion of Canada, whether exercising their ministry or retired, or whether they are or are not in connection with the United Church ; provided that the successors of ministers of congregations in the Province of Quebec existing at the time of the union which do not enter into such union, shall retain the same rights to the benefits of the Temporalities Fund which they would have had if such union had not taken place. So soon as any part of the revenue accruing from said fund is not required to meet the payment of said incomes and other vested rights in the fund and expenses therewith, the same shall pass to and be subject to the disposal of the said United Church ; and any part that may remain to the good after the death of the last survivor of the said ministers, shall thereupon pass to and be subject to the disposal of the Supreme Court of said United Church, for the purpose of a Home Mission Fund for aiding weak charges in the United Church ; and vacancies in the meantime occurring in said Board shall not be filled up in the manner hitherto observed, but shall be filled up in the manner provided by an Act passed during the present Session, entitled 'An Act to amend an Act to incorporate the Board for the management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland.'"

Clause 8 of the Act 38 Vic. cap. 75, Ontario, being "An Act respecting the Union of certain Presbyterian Churches named therein."

"CLAUSE. 8. Whereas the ministers of the said Presbyterian Church of Canada in connection with the Church of Scotland are entitled to receive income from a fund called the Temporalities Fund, administered by a Board incorporated by Statute of the heretofore Province of Canada, and it is proposed to preserve to them intact, during their respective lives, their said incomes derivable from said fund: it is therefore enacted that the present members of the said board shall continue in office and manage the said fund on behalf of the said ministers now deriving revenues therefrom, and the income to said ministers shall be continued in full to them respectively during their lifetime, and whilst Presbyterian ministers in good standing within the Dominion of Canada, whether in active service or retired, and whether in connection with the said Church or not; so soon as any part of the revenue accruing from said fund is not required to meet the payment of said incomes and other vested rights in the fund and expenses therewith, the same shall pass to and be subject to the disposal of the said United Church; and any part of the said fund that may remain to the good after the death of the last survivor of the said ministers shall thereupon pass to and be subject to the disposal of the Supreme Court of said United Church, for the purpose of a Home Mission Fund for aiding weak charges in the United Church; and vacancies in the meantime occurring in said board shall not be filled up in the manner hitherto observed, but shall be filled up from among the members of the said United Church nominated by the beneficiaries of the said fund."

Legislative
confusion.

Now assuming for argument's sake the three impugned Acts are constitutional, they present a carnival of contradictions.

The Quebec Union Act makes provision for the payment of incomes to present ministers and their "successors"

The Ontario Union Act makes no provision for "successors"; and the Quebec Act amending the Temporalities Act only makes provision for "successors who do not enter into such union."

Chief
Justice
Cockburn's
opinion.

The eccentricities of the impugned Acts justify the criticism of the late Sir Alexander Cockburn, who described Acts of Parliament as being "more or less unintelligible by reason of the uncouth and barbarous phraseology in which they are framed."

Again the Quebec Act, 38 Vic. cap. 64, which purports to amend the Act 22 Vic. cap. 66, declares (section 1): That "the administration of the fund shall continue on the same principles and for the same purposes as at present." One of the provisions of the old Act (sec. 2) was that yearly occurring vacancies in the Board should be filled annually by the Synod. Sections 11 and 8 from the Union Acts enact that "the present members of the said Board shall continue in office" indefinitely. There is no such provision in the Act passed amending the Act 22 Vic. cap. 66, and the yearly election provided for in the original Act would cease. There is however a provision for filling vacancies occurring "by death, resignation or otherwise."

The beneficiaries nominate persons to fill such vacancies (38 Vic. cap. 64, sec. 2).
 3.) *Only members of the United Church* are eligible for election as members of the Board under the Amending Act and the Union Act. Appellant disfranchised.

The Appellant under the Act 22 Vic. cap. 66, sec. 2, is eligible for election as a member of the Board Respondents: under the Provincial legislation he is ineligible for election (not being a member of the "United Church.") He is debarred from the right of administering an endowment fund in his own Church, which he aided to establish, and in the administration of which he has a personal interest.

10 The Statute of Canada 22 Vic. cap. 66, sec. 2, expressly confers upon the Appellant "civil right" of administration of the fund: the three provincial Acts take away this "civil right." He is rendered ineligible for election.

The franchise and qualification for membership of the Board Respondents established in Appellant's favour by the Statute 22 Vic. cap. 66, sec. 2, is not and has not a civil right, restricted by provincial bounds: it is a right that appertained to him in all parts of the old Province of Canada. It was not a "civil right," restricted to a province—it was general, and, Appellant submits, could not be affected by provincial legislation.

20 What was the object of the Act 38 Vic. cap. 64? It does not ask for the Incorporation of a Company "with provincial objects." It seeks to amend or rather to destroy an Act with powers and objects extending over two Provinces. The preamble of one of the Union Acts has already been cited in the extract from Mr. Justice Ramsay's Remarks.

Here is the preamble of the Act 38 Vic. cap. 64:

"Whereas by petition it hath been represented that the Synods of the Presbyterian Church of Canada in connection with the Church of Scotland, of the Presbyterian Church of the Lower Provinces and the General Assembly of the Canada Presbyterian Church have agreed to unite together and to form one body or denomination of Christians under the name of "the Presbyterian Church in Canada" and that the "Act to incorporate the Board for the management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland" and amendment thereto *require to be amended with a view to such union*, and in order to carrying into effect of certain resolutions passed by the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland with reference to said Temporalities Fund, and for the protection of those interested in the same."

A majority of the adherents of the four churches mentioned in the preamble had determined to unite into one church, under the name of "The Presbyterian Church in Canada." They severally had property, and they wished the entire property of the old churches, denominations, congregations and colleges to be vested in and to belong to the new church organization. They required legislation "in view of the said union." The "Temporalities Act" (22 Vic. cap. 66) "required to be amended with a view to *such union*." The new church organization required power to take and hold property for the "Presbyterian Church in Canada."

The promoters of the proposed union constituted majorities in four separate religious bodies. None of them was incorporated. They acted through their

General
object of
union Acts.

Synods. Their moderators were empowered to sign the terms of union. The contracting denominations comprised Presbyterians residing in the four Provinces of the confederation. The ecclesiastical union had no doubt been suggested and stimulated by the success of the political union of the Provinces of Canada, Nova Scotia and New Brunswick. The delegates from these four Church denominations, whose operations were collectively co-extensive with the territory of the Dominion, wished to unite their "ecclesiastical fortunes." The most ordinary foresight would have suggested that they should apply to the Dominion Parliament for an Act authorizing their union and with it the right to hold and administer property belonging to the "United Church." The course here suggested 10 was precisely that adopted by the Baptists, who in 1880 applied to and obtained from the Dominion Parliament "An Act to incorporate the Baptist Union of Canada"—43 Vic. cap. 76.

Baptist
union incor-
porated for
Canada.

Section 2 declares that: "The objects of said union are to unite in itself, as far as practicable, *the whole Baptist body of Canada* in the promotion of missions, literature, superannuated ministers' aid and Church edifice funds, &c."

Section 4 of the Baptist Union Act confers upon the Union power to "acquire, hold, administer and dispose of property."

These objects and powers are very similar to those of the Act 22 Vic. cap. 66.

The high contracting Presbyterian bodies adopted a different course. Their 20 object was not so much legislative sanction to union as the possession of property.

The Presbyterian Church of Canada in connection with the Church of Scotland was richly endowed by private munificence, congregational liberality, and the bounty of the Crown.

The uniting bodies desired three things.

Special
objects of
impugned
Acts.

1o. A legislative recognition of the "United Church"—the "Presbyterian Church in Canada"—not necessarily an act of incorporation, for that they could not ask for from Legislatures having powers restricted to incorporating Companies with provincial objects only: but still such a recognition as would practically amount to incorporation. 30

2o. The right to take and hold property in future.

3o. The right to confiscate the rich endowments of the Presbyterian Church of Canada in connection with the Church of Scotland.

So completely was this last object kept in view that in addition to the special amendment that is now attacked, the *flanking clauses* were inserted in the two provincial union acts.

Apart from the decision in this there have been no decisions in Canada upon the constitutionality of the Act 38 Vic. cap. 64. There is a decision in Ontario which was cited in the Court of Queen's Bench—*Cowan vs. Wright*—23 Grant's Chancery Reports, Upper Canada, p. 623—in which Vice-Chancellor Blake holds, 40 in an action between the adherents of the new Church and those of the Presbyterian Church of Canada in connection with the Church of Scotland, as to the right to the Church edifice, which had been previously owned by the congregation, and which was not a Church "created" by the corporation Respondents—that the Act 38 Vic. cap. 75, in so far as the matter in controversy was concerned, was constitutional.

Much and forcible reasoning may be adduced that the property of individual congregations in the several provinces is subject to provincial legislation: such was the issue in the case decided by Vice-Chancellor Blake; but this question is widely divergent from the issues raised by Appellant, who challenges the power of the local legislatures to amend or abolish an Act whose objects and powers exceed the domain of provincial competency. This is not, as the issue in Cowan and Wright was, a "parish business," to quote the language of Chief Justice Richard in another case. The decision in that case therefore is not in point.

It is obvious that the legislation impugned was not only ultra-provincial and general in its objects, but that it sought to affect an Act that was general in character and scope.

If it be admitted—and it cannot be denied—that the objects and powers of the Act 22 Vic. cap. 66, extended over the whole province of Canada, up to the time of confederation, and that the Act remained in force throughout the same territory existing under the new names of Ontario and Quebec till 1875, it is submitted that it could only be legislatively affected by the Dominion Parliament.

Section 129 of the British North America Act 1867 enacts:

"Except as otherwise provided by this Act, all laws in force in Canada, Power to amend old statutes.
 "Nova Scotia, or New Brunswick at the Union, and all Courts of civil and
 20 "criminal jurisdiction and all legal commissions, powers and authorities, and all
 "officers, judicial, administrative, and ministerial, existing therein at the Union,
 "shall continue, in Ontario, Quebec, Nova Scotia, and New Brunswick respectively,
 "as if the Union had not been made; subject, nevertheless (except with respect
 "to such as are enacted by or exist under Acts of the Parliament of Great Britain
 "or of the Parliament of the United Kingdom of Great Britain and Ireland) to
 "be repealed, abolished, or altered by the Parliament of Canada, or by the Legis-
 "lature of the respective Province, according to the authority of the Parliament
 "or of that Legislature under this Act."

There can be no doubt that the Act 22 Vic. cap. 66 continued in full force
 30 and effect until the year 1875, and that its provisions, which are invoked for
 the benefit of the Presbyterian Church of Canada in connection with the
 Church of Scotland, extended over the entire territory comprised in the old
 Province of Canada.

The section does not, apparently, contemplate the repeal of any anti-confederation statute by the conjoint action of two or more legislatures: it simply contemplates the repeal or amendment of an anti-confederation statute with regard to the competency of Parliament or of the legislature, not legislatures, to deal with the subject matter of the Act of incorporation.

The crucial question is: "Has the Dominion Parliament or the local legis-
 40 lature the power to alter, repeal or amend the Statute 22 Vic. cap. 66?" The
 Appellant submits that the power to repeal or amend the statute in question
 appertains to the Dominion Parliament, whose powers in legislation "to make
 laws for the peace, order and good government of Canada" are precisely the
 same as had been conferred upon the Parliament of the Province of Canada, as
 enacted by the Statute in question. The objects of the Statute 22 Vic. cap. 66
 are to extend to the entire Province of old Canada: all the civil rights conferred
 by it, the powers—"civil rights"—created by it, were not restricted to either of

the Provinces of Upper and Lower Canada, and consequently cannot be construed as civil rights in the sense of being Ontario or Quebec rights, but must be regarded as civil rights extending throughout the whole Province of Canada. The Chief Justice of the Court of Queen's Bench (appeal side) of Lower Canada, in rendering his judgment in this case, said (Appeal Book, page 345); "An Act incorporating a religious body for the purpose of acquiring property and of managing it for the support of their ministers, and for educating young men to be ministers is *undoubtedly an Act conferring civil rights* by giving to the body so incorporated a civil status which it had not before." That is precisely the contention of the Appellant in this case, and the civil rights conferred upon the 10 Corporation Respondent, under the Act 22 Vic. cap. 66, extend, by the express terms of that Act, not to the Provinces of Quebec and Ontario *severally*, but to them *collectively*, that is, to the entire Province of Canada.

Starting from this point, the first question that it is important to have clearly established is: "Has the Legislature of Quebec power to amend the Act 22 Vic. cap. 66?"

To support the affirmative of this proposition, the Respondents rely upon 11, 13 and 16 sub-sections of section 72 of the British North America Act of 1867. Sub-section eleven relates to "the incorporation of companies *with provincial objects*" 13 relates to "property and civil rights *in the Province*," and 20 16 "generally to matters of a merely local and private nature in the Province." The learned Chief Justice Dorion entirely bases his judgment upon the authority conferred by these sub-sections upon the local Legislature. He says:

Chief
Justice
Dorion's
opinion.

"After the most careful consideration I have been able to give to this important case, I have come to the conclusion that the Act 38 Vict. chap. 64, to "amend the Act intituled "An Act to incorporate the Board of Management of "the Temporalities Fund of the Presbyterian Church of Canada in connection "with the Church of Scotland," is an Act affecting the *status*, the property and "the civil rights of the corporation, within the Province of Quebec, and that "under sub-sections 11, 13 and 16 of section 92 of British North America Act 30 "of 1867, these were within the scope of the legislative authority conferred on "the Local Legislature of that Province."—(Appeal Book, p. 449.)

Companies
with provin-
cial objects.

With regard to sub-section 11—the incorporation of companies with provincial objects—it is submitted that the terms of the sub-section clearly indicate that the right of incorporation of companies in the province is restricted to the incorporation of companies "*with provincial objects*." The limitation is express, and the absence of any restriction in the clause (91) specifying the powers of the Parliament of Canada, taken in connection with the restricted powers of incorporation conferred by this sub-section on the provincial legislatures, clearly leaves to the general legislature of the country, the Dominion Parliament, the right to 40 incorporate companies with other than provincial objects. The proposition is so clear from a consideration of the Act, that any attempt to argue it savours of surplusage. This view does not lack the sanction of authority. In support of this reasoning the Appellant cites the opinion of the late Chief Justice Harrison in the case of "*Parsons vs. The Citizens Insurance Co.*" (43 Upper Canada Queen's Bench Reports, page 261), in which he says: "The exclusive power for the incorporation of companies with other than provincial objects, is not, in express

Chief
Justice
Harrison's
view.

"language, conferred upon either legislative body, but it impliedly remains with the Dominion Parliament."

Mr. Justice Gwynne of the Canada Supreme Court (4 Supreme Court Reports, page 334) says: "From the frame of item No. 11 it is plain that what was intended by annexing the qualification 'with provincial objects' was not the power of incorporating companies for all purposes, but a limited power; for inasmuch as, wholly irrespective of these words the local legislatures could give no powers beyond their respective provinces to companies incorporated by them, these words 'for provincial objects' are superfluous, and have no sense unless they be read as words of limitation, having a restricted operation; it would have been sufficient to have said simply 'the incorporation of companies'; but 'for greater certainty'—a principle which pervades the Act—these words 'with provincial objects' were introduced to confine the power to these purposes which are specially placed under the control of the local legislatures in express terms, so as to leave nothing to be implied or inferred."

Mr. Justice Gwynne's view.

In fact, the Dominion legislature at every session incorporates companies with general objects. The Act to incorporate the Baptist Union, above referred to, conferring powers analogous to those conferred upon the corporation Respondents by the Act 22 Vic. cap. 66, is exactly in point. It is clear that if the provincial legislature cannot incorporate companies, saving only those with provincial objects, it cannot amend or repeal Acts that have objects of a general character and that are not restricted to provincial objects.

Nor can the Respondents rely for the constitutionality of the Act impugned upon sub-section 16 of section 92, which assigns to the provincial legislature "generally all matters of a merely local or private nature in the province." The subject matters of the Act 22 Vic. cap. 66, cannot be regarded as of "a merely local or private nature in the Province" of Quebec. The contents of the Act clearly show that they have application to the entire old Province of Canada and the entire new Provinces of Ontario and Quebec within the Dominion of Canada. In no sense, therefore, can the subject matter of the Act 22 Vic. cap. 66 be regarded as matter of a merely local or private nature in the province. The use of the words "matters of a merely local and private nature in the province," clearly indicate matters entirely of provincial concern and not having reference to extra-provincial objects. If the words "local and private," qualifying the word "nature," do not sufficiently indicate the scope of provincial power, the prefix "merely" dissipates every pretension for an enlarged constitution, and comprises the interpretation here suggested. It cannot be conceived that, by any possible construction, the words "matters of a merely local or private nature in the province" can be enlarged so as to have reference to subjects that are not local, not private, but which have reference to property and civil rights, extending beyond the province and to another province. If the subject of an Act be merely a local or private matter within the province, it clearly comes within the competency of the Provincial legislature; if it be not a merely local or private matter within the province, and does not come within any of the classes of subjects exclusively assigned to the local legislature, it clearly falls under the domain of Dominion legislative authority. The decisions in the cases of "L'Union

Merely local or private matters in the province

St. Jacques de Montréal *vs.* Belisle" (6 Law Reports, Appeal Cases Privy Council, page 31), and Dow *vs.* Black (6 Law Reports, Appeal Cases Privy Council, page 272), expressly recognise the criticism here made with regard to sub-section 16. These cases will receive fuller examination in connection with the discussion of sub-section 13 as to "property and civil rights in the province."

Property
and civil
rights in the
Province.

Nor can the pretensions of the Respondents be sustained under the sub-section 13 of section 92, which confers upon the provincial legislatures the right to legislate upon matters relating "to property and civil rights in the province."

As a matter of fact the Respondents have mainly relied upon this sub-section for the maintenance of their views, and the judgment in the Court below, rendered by the Hon. Mr. Justice Jetté, is based entirely on this sub-section.

The following extract taken from the judgment of the learned judge, fully expresses his views :

Judge
Jetté's
opinion.

"Section 92. "In each Province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next herein-after enumerated; that is to say; 11th. The incorporation of companies with Provincial objects. 13th. Property and civil rights in the Province."

"*Property and civil rights are thus, in virtue of this disposition of our present constitution, submitted to the exclusive control of the Provincial Legislatures. Now, what was the object of the corporation created by the Statute 22, Victoria, cap. 66? Nothing else than the ownership and the possession of certain property; that is to say, that the Legislature of United Canada has accorded, by this Act, those rights which are included specially in the category of subjects exclusively entrusted at the present time to the Provincial Legislatures. It is true that under the former régime the two Provinces, being subject to a Legislative union, these same rights were under the control of the Legislature of the Union, and consequently the privileges accorded in this respect to corporations created by this Parliament extended (except when specially restricted) to all the territory subject to its jurisdiction. But the extent of this territory, whether more or less, does not change anything in the nature itself of these rights; and since these rights are now entrusted to the Provincial Parliament, can it be pretended that it has neither the right nor the power to legislate in a manner to affect them? Certainly not. The change in our political system cannot have had the effect of rendering perpetual what has been done in the past! It is to be assumed rather that property and civil rights then already in existence, and having been established in the past, as well as property and civil rights to be established for the future, are made subject to the jurisdiction of the Provincial Legislatures. It must be admitted, therefore that the changes which the Parliament of United Canada could have made, and no one will deny that it had the absolute right to make in the Act of Incorporation of the "Temporalities Fund," the Legislature of the Province of Quebec can make with the same authority and the same effect within the limit of the territory attributed to its jurisdiction. But, says the Petitioner, it is exactly this restriction as to territory which saves my rights; not having a domicile in this Province, I am not subject to the control of this Legislature and therefore my rights cannot be affected by this legislation. This objection is not serious. The constitution, in subjecting property and civil rights to the control of the Provincial Legislatures, did not make and*

“ could not make a distinction between the possessors of these rights; it has not
 “ limited the legislative authority to the case where the property belonged to a
 “ resident only! No, *all rights of property, whether possessed by a resident or a*
 “ *non-resident, are under the authority of the legislative power of the Province.*
 “ *Any other interpretation of our constitution would be contrary to the best estab-*
 “ *lished principles of the civil law and of the public law.* Therefore, either the
 “ rights which the Petitioner claims exist in the Province or they do not. If they
 “ do not, what can he seek from this Court? If they do, they only exist as re-
 “ cognized by the laws passed or maintained by our Legislature. Now, I find
 10 “ that this Legislature has changed the disposition of the property, from whence
 “ flow the rights of the Petitioner, in two important respects: 1st, as to the ad-
 “ ministration; 2nd, as to the final disposition of the fund constituting this prop-
 “ erty. Firstly, as to the administration, the Statute 38 Victoria, cap. 64, of which
 “ the annulling is sought, completely justifies the action of the Corporation, Res-
 “ pondents, and of the members composing it. Secondly, as to the final disposi-
 “ tion of the Temporalities Fund the Statute 38 Victoria, cap. 62, which is not
 “ attacked, while securing to the present ministers their annual incomes intact,
 “ transfers finally the property of this fund to the United Church under the
 “ name of the Presbyterian Church in Canada.

20 “ Now, it appears to me incontestable, according to the provisions of our Con-
 “ stitutional Act, that these two Acts, in so far as they affect civil rights and rights
 “ of property (and there are none other in question before this Court), were within
 “ the authority and jurisdiction of our Provincial Legislature, and therefore that
 “ they irrevocably settle the rights of the parties. In the face of this legislation,
 “ it is impossible for me to declare that the Respondents have acted illegally and
 “ without right in the administration of the fund entrusted to them; that these
 “ same Respondents are not legally members of the said corporation, Respondents,
 “ and that the “ Temporalities Fund ” does not belong to the Church, to which
 “ the law attributes it, and that it cannot be applied in the manner provided by
 30 “ that law ”.—(Appeal Book, pp. 396 and 397).

The views of the Honorable Judge who rendered judgment in the Superior
 Court are given at length, in order that they may not be subjected to partial
 criticism. It is perfectly obvious, from a perusal of them, and in fact from the
 direct statements made in them, and which the Appellant has taken the liberty
 to italicise, that the Honorable Judge considers that under our constitution *all prop-*
erty and all civil rights are subject to the jurisdiction of the provincial Legislature.
 “ Any other interpretation of our constitution,” says Mr. Justice Jetté, “ would
 be contrary to the best established principles of civil law and of public law.”

The misfortune of this view is that it is at direct variance with holdings of
 40 the Judges of the Supreme Court of Canada and of Her Majesty's Judicial Com-
 mittee.

It will appear, also, from an examination of the remarks of the Hon. Chief
 Justice of the Queen's Bench (appeal side) that his opinions are not free from
 the infirmity indicated as existing in the opinions of Mr. Justice Jetté. “ The
 “ British North America Act was passed for the very purpose of allowing each
 “ Province to regulate its own internal affairs, including civil rights, the incor-
 “ poration of companies for provincial objects, without interference on the part

Chief
 Justice
 Dorion's
 remarks.

"of representatives of other provinces through the Dominion Parliament." — (Opinion of Chief Justice Dorion, Appeal Book, page 446, lines 9-13.)

If the learned Chief Justice means to restrict this proposition within the limits of sub-sections 11, 13 and 16, the Appellant can readily assent to it, for in these sections the words "in the province" qualifying the words "property and civil rights," the words "with provincial objects" qualifying the words "the incorporation of companies," the words "of a merely local or private nature in the province" qualifying "all matters"—explicitly limit the domain of provincial authority. But the proposition of the Hon. Chief Justice is stated in a more general form, and gives the impression that he inclines to the view of Mr. Justice Jetté that all property and all civil rights are subject to provincial legislation. Fortunately for the Appellant, all doubts as the views of the learned Chief Justice on this subject are dissipated by his express declaration (Appeal Book, page 448, lines 1-9): "We have seen that the authority to pass laws relating to civil rights is vested in the local legislature." It is upon this assumption that the learned Chief Justice bases his opinion that the provincial legislature alone, under section 129 of the Confederation Act, has the power to repeal, abolish or alter the Act 22 Vic. cap. 66. The Appellant submits that there is a fundamental error in the opinions of the Hon. Chief Justice of the Court of Queen's Bench, and Mr. Justice Jetté, in assuming that "property and civil rights" are exclusively the subject of provincial legislation. The qualifying words "in the province" appended to the words "property and civil rights" in sub-section 13 of section 92 sufficiently indicate that the property and civil rights therein referred to were such as had reference to provincial matters only, and that other property and civil rights fall within the domain of the Dominion Parliament.

Judge Ramsay's views are expressed with great force of reasoning:

Judge
Ramsay's
opinion of
the constitu-
tional ques-
tion.

"The Respondents, relying on sub-section 13 of section 92 B. N. A. Act, 'which gives legislative power to the Provincial Legislatures over 'property and civil rights in the Province,' contend that having full control over all property, the Legislature of Quebec has full power to deal with all property which may exist in the Province of Quebec, and consequently that it has the power to confiscate the funds of the Presbyterian body situate in the Province of Quebec, and present them to some one else, and that this has been done. On the other hand, Appellant contends that the Local Legislature has no right to incorporate any companies but those having provincial objects (Ib. sub-section 11); that this is tantamount to saying that the right to incorporate companies with other than local objects is exclusively reserved to the Dominion Parliament (Sect. 91, B. N. A. Act); that the Board of management was an incorporation for other than provincial objects, and therefore that it could not have been created a corporate body by a local Act, and consequently that its act of incorporation cannot be altered or amended by any local legislature.

"I must confess that the sections upon which the contending parties rely appear to me to be irreconcilable by themselves. If the local power to legislate over property and civil rights in the Province is to be interpreted to mean over 'all' property, &c., then the power of Parliament to incorporate is illusory. In practice it never has been contended that property means all property. Railway companies incorporated by Parliament, for instance, hold and manage their

"property under Dominion laws, and such companies evict people from their
 "private property in each province under Dominion laws. No one will venture
 "to affirm that a local Act could confiscate the property of a railway company
 "incorporated by Parliament, or transfer it to another company or person. And
 "so it has been decided in the case of *Bourgoin and The Q., M., O. & O. Railway*
 "Co. by the Privy Council (3rd Legal News, p. 185) that a railway with all its
 "appurtenances, and all the property, liabilities, rights and powers of the exist-
 "ing company, could not be conveyed to the Quebec Government, and, through
 "it, to a company with a new title and a different organization, without legisla-
 10 "tive authority, and that if the railway was a Federal railway, the Act author-
 "izing the transfer must be an Act of the Parliament of Canada. Nor, by parity
 "of reasoning, could the Local Legislature confiscate the surplus funds of a bank
 "on the pretext that it was property in the Province. It is impossible to conceive
 "more obvious limitations to the right to legislate as to property than these.
 "Again, we have had two decisions limiting the sub-section in question. In the
 "case of *Evans v. Hudon*, and *Browne, T.S.*, Mr. Justice Rainville held that a
 "local Act was unconstitutional which authorized the seizure by process of law
 "of the salaries of federal officers, 22 L. C. J., p. 268; and the Court of Appeal
 20 "in Ontario, in the case of *Leprohon & The Corporation of Ottawa*, 2 Tupper, p.
 "522, held, reversing the judgment of the Queen's Bench, 40 U. C. R. 478, that
 "under the B. N. A. Act, 1867, a provincial legislature has no power to impose
 "a tax upon the official income of an officer of the Dominion Government, or to
 "confer such a power on the municipalities. These decisions can only be sus-
 "tained on the ground that property in the sub-section in question does not in-
 "clude such property and civil rights as are necessary to the existence of a
 "Dominion object, to copy the phraseology of the B. N. A. Act. It may, per-
 "haps, be said that sec. 91, s. s. 8, B. N. A. Act, specially gives to the Federal
 "Parliament the power of fixing the salaries; but this does not seem to me to
 "affect the question. After the salary has been fixed and is possessed by the
 30 "individual, it becomes property in the province. We are, therefore, obliged to
 "sustain the judgment on some other general principle which limits the effect of
 "s. s. 13, sec. 92 B. N. A. Act.

"On the other hand we have a decision of Vice-Chancellor Blake, in the case
 "of *Cowan & Wright*, 23 Grant, Ch. Rep., p. 616, upholding the constitutionality
 "of the Ontario Act (38 Vic. cap. 75) except in so far as it attempted to deal with
 "property in the Province of Quebec. This is, of course, a decision of the precise
 "point before us, and therefore it becomes important to examine the grounds upon
 "which it was rendered. It appears to me that it is undeniable that the local
 "legislature, acting within the scope of its powers, has a right to legislate as abso-
 40 "lute as the Dominion Parliament legislating within the scope of its powers.
 "Indeed, this doctrine as to the respective powers of the Dominion and Local
 "Legislatures seems to me to be almost the only one on which there has been
 "entire unanimity of opinion. But when from this it is sought to glide to the
 "conclusion that the words of section 92 are alone to be considered as defining
 "the exclusive rights of the Local Legislatures, I think we arrive at a doctrine
 "opposed to positive law, and to the authority not only of the Courts, but to the
 "authority of practice.

Conjoint
action of
legislatures
will not
avail.

"There is a sort of floating notion that by the conjoint action of different legislatures, the incapacity of a local legislature to pass an Act may be in some sort extended. Section 15 of the 38 Vic. cap. 62 (Queb. ., seems to have been added under the influence of such an idea. By it the Dominion and local legislatures are permitted to recognize and approve. I cannot understand anything more clear than this, that the local legislatures, by corresponding legislation cannot in any degree enlarge the scope of their powers. When the question is between the authority of Parliament and that of a local legislature, the forbearing to legislate in a particular direction by Parliament may leave the field of local legislation more unlimited. This is the only bearing I can conceive the case of 10 the Union St. Jacques & Belisle, can have on this case. What the Privy Council held in that case was that a special Act for the relief of a corporate body did not fall within the meaning of 'Bankruptcy and Insolvency' (B. N. A. Act sect. 91, s. s. 21) and this more particularly as there was no Dominion Act with which it interfered. It is, therefore, dead against the pretensions of Respondents in this case, for the legislation objected to upsets a Dominion Act, that is to say, if corporations which have not alone provincial objects (provincial according to the meaning of the B. N. A. Act, *i. e.*, relating to one Province under the Act) created before Confederation, are under Dominion Laws. On this point there has never been a doubt. For instance, the Acts of incorporation of the G. T. 20 Railway, an old Province of Canada incorporation, have been amended by Dominion Acts, never by local ones.

"Another authority in support of the constitutionality of the Ontario Act has been mentioned by Mr. Todd in his very valuable volume on "Parliamentary Government in the British Colonies," (p. 355). This is, of course, an authority not to be despised, and if it had been given free from all bias by political considerations I should have considered it a very valuable opinion. But, without meaning to imply any sort of criticism as to the exercise of the discretion of the Federal Government in the disallowance of bills, I may say that we all know that the Federal Government is most unwilling to interfere in a too trenchant 30 manner with local legislation, and where there is room for doubt as to the limits of the powers exercised, and where great popular interests are involved, they readily leave the question to the decision of the Courts. The report referred to by Mr. Todd, therefore, amounts to little more than this, that where part of an Act is evidently *ultra vires* and the rest not evidently so, the Federal Government will not interfere and disallow the bill. I have already said that the terms of section 92 of the B. N. A. Act do not alone decide as to the limit of the local legislative power. Those who drew the B. N. A. Act saw that, in spite of all precautions, it would be impossible so to define the exclusive powers as to avoid clashing. It was therefore enacted at the end of section 91, as a rule of 40 interpretation, that "any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces." This appears to me to be decisive in the present case, and I feel myself compelled to come to the conclusion that an Act which disposes of the property of a corporation created by a Federal law is unconstitutional.

- “There is another way of considering the matter, which appears to me to ^{Another} bring forward this view still more clearly. If the Presbyterian body all over ^{view.} Canada wanted an Act of incorporation to enable them to manage their property, no local legislation would suffice. This brings me to still another consideration. The Ontario Act and the 62 cap. 38 Vic. (Quebec) are Acts of incorporation to all intents and purposes. It is true they do not, in so many words, declare certain persons to be a body corporate, but each gives to a certain organization corporate powers; each creates a fictitious person able to receive and hold by gift and devise. It will scarcely be pretended that these two
- 10 “Acts have created but one body corporate. They have evidently created two corporations, each of which deals with Presbyterians all over Canada. Now, let us apply the rule of *ultra vires* laid down in the minute of Council mentioned by Mr. Todd. It was there said the Act of Ontario was *ultra vires* in so far as it dealt with property in the Province of Quebec. Is it not by parity of reasoning also *ultra vires* in so far as it deals with civil rights outside the Province? If so, then cap. 62 is equally void so far. And what is the result? The Ontario Act not having been disallowed, exists so far as it can be applied within the local jurisdiction—that is, it has incorporated the Presbyterians in Ontario, under the name of “The Presbyterian Church in Canada.” The Quebec statute has incorporated the Presbyterians of Quebec under the name of
- 20 “‘The Presbyterian Church in Canada,’ or any other name the said Church may adopt,’ and it is in favour of this un-named Corporation, and not in favour of the Ontario body, it has confiscated the property of ‘The Presbyterian Church in Canada in connection with the Church of Scotland.’ This mode of executive morselling would have the effect of producing a result which no Legislature contemplated. If a donor directs that £5 a piece be given to ten persons, it may logically be assumed that to give £1 apiece to each is partly to fulfil his directions; but to give the whole fifty pounds to one of the ten persons, is to contravene his directions. Therefore, to let a law stand which
- 30 “is partly *ultra vires* and partly constitutional, may be the most perfect mode of defeating the legislative will. I therefore say that a law which is *ultra vires* in part may be *ultra vires* in whole, and so it may be construed, at all events when it appears that the object of the Act is not attained by a partial execution. Take for instance an act of incorporation of a railway company from Quebec to Toronto. Could that be interpreted as an act of incorporation from Quebec to the Province Line? Unquestionably it could not be. But I shall be told
- 40 “‘there is a special exception for that’ (sect. 92, s. s. 10, a). The exception is not, however more formal than the exception from incorporation by local Act of companies having other than provincial objects. I therefore think that the Act purporting to create the body to be benefitted by the transfer of the temporalities fund is *ultra vires* in whole.

Executive
morselling.

That the Dominion Parliament has power over property and civil rights connected with the subjects to which its legislative authority extends is a proposition not at variance with the terms of sections 91 and 92.

This view has been acted upon by the Dominion authorities, and has the judicial sanction of the Supreme Court of Canada and of Her Majesty's Privy Council.

Valin vs.
Langlois,
Chief
Justice
Ritchie's
opinion.

In the case of Valin v. Langlois (3 Canada Supreme Court Reports, page 15) Chief Justice Ritchie said:

"The property and civil rights referred to were not all property and civil rights, but that the terms 'property and civil rights' must necessarily be read in a restricted and limited sense, because many matters involving property and civil rights are expressly reserved to the Dominion Parliament, of which the first two items in the enumeration of the classes of subjects to which the exclusive legislation of the Parliament of Canada extends are illustrations, viz., (1) 'the public debt and property,' (2) the regulation of trade and commerce,' to say nothing of 'beacons, buoys, light-houses,' etc., 'navigation and shipping,' 10 'bills of exchange and promissory notes,' and many others directly affecting 'property and civil rights.'"

"The Dominion Parliament would only have the right to interfere with property and civil rights in so far as such interference may be necessary for the purpose of legislating generally and effectually in relation to matters confided to the Parliament of Canada."—(Ibid. page 16.)

"I think that the British North America Act vests in the Dominion Parliament plenary powers of legislation in no way limited or circumscribed, and as large and of the same nature and extent as the Parliament of Great Britain, 20 by whom the power to legislate was conferred, itself had. The Parliament of Great Britain clearly intended to divest itself of all legislative power over the subject matter, and it is equally clear that what it so divested itself of it conferred wholly and exclusively on the Parliament of the Dominion. The Parliament of Great Britain with reference to the power and privileges of the Parliament of the Dominion of Canada, and with reference to the trial of controverted elections, has made the Parliament of the Dominion an independent and supreme Parliament, and given to it power to legislate on these subjects in like manner as the Parliament of England could itself legislate on them. It is a constitutional grant of privileges and powers which cannot be restricted or 30 taken away except by the authority which conferred it, and any power given to the local legislatures must be subordinate thereto." (Ibid pp. 16 and 17.)

Mr. Justice Taschereau, in the same case, page 77, says:

Judge
Taschereau's
opinion.

"The authority of the federal power, it seems to me, over the matters left under its control is exclusive, full and absolute, whilst as regards at least some of the matters left to the provincial legislatures by sect. 92, the authority of these legislatures cannot be construed to be as full and exclusive, when by such construction the federal power over matters specially left under its control would be lessened, restrained or impaired. For example, civil rights, by the letter of sub-sect. 13 of sect. 92, are put under the exclusive power of the local 40 legislatures, yet this cannot be construed to mean 'all civil rights,' but only those which are not put under the federal authority by the other parts of the Act." (Valin and Langlois, 3 Canada Supreme Court Reports, p. 77.)

In the same case, Mr. Justice Fournier says:

Judge
Fournier's
opinion.

"Rien n'est plus clair ni plus certain que les législatures n'ont pas une juridiction complète sur les droits civils. Si tel était le cas, les termes 'droits civils,' comprenant, par opposition au droit criminel, tous les droits dont un

"sujet peut jouir, il s'ensuivrait que les provinces auraient une juridiction illimitée sur tout ce qui ne dépendrait pas du droit criminel."—(Ibid. p. 41.)

"Le Parlement impérial, qui a organisé l'état de choses actuel, a jugé à propos de ne donner aux provinces que des attributions définies et limitées, laissant au gouvernement fédéral, moins les attributions réservées, l'exercice de tous les pouvoirs de la souveraineté compatible avec l'état colonial."—Ibid. p. 43.)

- In the case of *The City of Fredericton and The Queen*, it was held "That by the British North America Act, 1867, plenary powers of legislation are given to the Parliament of Canada over all matters within the scope of its jurisdiction, and that they may be exercised either absolutely or conditionally; in the latter case the legislation may be made to depend upon some subsequent event, and be brought into force in one part of the Dominion and not in another." (3 Canada Supreme Court Reports, page 505.)
- City of
Fredericton
vs. The
Queen.

This holding not only recognizes the power of Parliament to legislate generally, but also specially for parts of the Dominion. It could therefore pass Acts to amend 22 Vic. cap. 66, applying to Ontario and Quebec.

In rendering judgment in *The City of Fredericton v. The Queen*, Chief-Justice Ritchie said:

- "If the subject matter dealt with comes within the classes of subjects assigned to the Parliament of Canada, I can find in the Act no restriction which prevents the Dominion Parliament from passing a law which affects one part of the Dominion and not another, if Parliament in its wisdom thinks the legislation applicable to and desirable in one part and not in the other."
- Chief
Justice
Ritchie's
opinion.

"The Dominion Parliament is authorized to make laws for the peace, order and good government of Canada in relation to all matters not coming within the class of subjects by the Act assigned exclusively to the legislatures of the Provinces."

- The Honorable Mr. Justice H. E. Taschereau in the same case said:

"Once the power of legislation over a certain matter is found not to vest in the local legislatures . . . that power necessarily falls under the control of the Dominion Parliament, subject, of course, to the exigencies of our Colonial status." (3 Canada Supreme Court, p. 558.)

Judge
Taschereau's
opinion.

In the same case Mr. Justice Gwynne said:

- "The mode devised for founding this new Dominion and for giving it a constitution similar in principle to that of the United Kingdom, was to constitute it as a *quasi* Imperial Sovereign Power. . . . whose executive and legislative authority should be similar to that of the United Kingdom, that is to say as absolute, sovereign and plenary as, consistently with its being a dependency of the British Crown, it could be in all matters whatever, *save only in respect of matters of a purely municipal, local or private character—matters relating to the family life of certain subordinate Provinces, and to which Provinces legislative jurisdiction, limited to such matters, was to be given.*"
- Judge
Gwynne's
opinion.

Again, Mr. Justice Ramsay's opinion is sustained by Mr. Justice Gwynne of the Supreme Court of Canada: "I have already, in *City of Fredericton v. The Queen*, expressed my opinion that the plain meaning of the closing sentence of

"sec. 91 is that (notwithstanding anything in the Act) any matter coming within any of the subjects enumerated in the 91st section shall not be deemed to come within the class of subjects enumerated in the 92nd section, however much they may appear to do so. Jurisdiction therefore 'over property and civil rights in the Province is not vested *absolutely* but *qualifiedly* in the local legislature. In so far as jurisdiction over 'property and civil rights' in every province may be deemed necessary for the perfect exercise of the exclusive jurisdiction given to the Dominion Parliament over the several subjects enumerated in section 91, it is vested in the Parliament, and what is vested in the local legislatures by item 13 of section 92 is only jurisdiction over so much property and civil rights as may remain, after deducting so much of jurisdiction over these subjects as may be deemed necessary for securing to the Parliament exclusive control over every one of the subjects enumerated in section 91—the residuum, in fact, not so absorbed by the jurisdiction conferred on the Parliament." (Citizens Insurance Co. v. Parsons, 4 Canada Supreme Court Reports, pp. 330, 331.)

Citizens Insurance Co.
vs. Parsons.

Chief Justice
Ritchie's
opinion of
what are
property
and civil
rights in the
Province.

In the same case the learned Chief Justice Ritchie re-affirms the opinion expressed by him in Valin v. Langlois quoted above, and makes an important statement as to the subject matters under exclusive provincial control:

"I adhere to what I said in Valin and Langlois, that while the property and civil rights referred to were not *all* property and *all* civil rights, but that the terms 'property and civil rights' must necessarily be read in a restricted and limited sense, because many matters involving property and civil rights are expressly reserved to the Dominion Parliament, and the power of the local legislatures was to be subject to the general and special legislative powers of the Dominion Parliament—and to what I then added: 'that while the legislative rights of the local legislatures are in this sense subordinate to the rights of the Dominion Parliament, I think such latter right must be exercised, so far as may be, consistently with the right of the local legislatures; and therefore the Dominion Parliament would only have the right to interfere with property or civil rights, so far as such interference may be necessary for the purpose of legislating generally and effectually in relation to matters confided to the Parliament of Canada. The power of the Dominion Parliament to regulate trade and commerce ought not to be held to be necessarily inconsistent with that of the local legislatures to regulate property and civil rights in respect to all matters of a merely local or private nature; such as matters connected with the enjoyment and preservation of property in the Province or matters of contract between parties in relation to their property or dealings.'"

"Although the exercise by the local legislatures of such powers may be said remotely to affect matters connected with trade and commerce, unless, indeed, the laws of the provincial legislatures should conflict with those of the Dominion Parliament passed for the general regulation of trade and commerce, I do not think the local legislatures are to be deprived of all power to deal with property and civil rights, because Parliament, in the plenary exercise of its power to regulate trade and commerce, may possibly pass laws inconvenient with the exercise by the local legislatures of their powers—the exercise of the powers of the local legislatures being in such a case subject to such regulations as the Dominion Parliament may lawfully prescribe. The Act now under consideration

"is not, in my opinion, a regulation of trade and commerce; it deals with the contract of fire insurance, as between the insurer and the insured." (Citizens Insurance Co. v. Parsons, 4 Canada Supreme Court Reports, page 243.)

Here we have a very clear view expressed by the learned Chief Justice as to what matters are assigned respectively to the Dominion Parliament and to the Legislatures of the Provinces.

Mr. Justice Ramsay's view that *all* property and *all* civil rights are not exclusively the subjects of provincial legislation, is *certainly* confirmed by that of the judges of the Supreme Court of Canada and of the Privy Council itself.

Judge Ramsay sustained by the Privy Council.

10 In the case of "Cushing v. Dupuy" (5 Law Reports, Appeal Cases, House of Lords, Privy Council Appeals, page 415), Sir Montague E. Smith in rendering judgment, said:

"It would be impossible to advance a step in the construction of a scheme for the administration of insolvent estates without interfering with and modifying some of the ordinary rights of property and other civil rights, nor without providing some mode of special procedure for the best realization and distribution of the estate and the settlement of the liabilities of the insolvent."

Sir Montague E. Smith's opinion.

It is submitted that these authorities are sufficient to demonstrate that there is a fundamental error in the assumption of the Chief Justice of the Court 20 of Queen's Bench of Lower Canada, and of Mr. Justice Jetté of the Superior Court, that all property and all civil rights fall within the exclusive legislative jurisdiction of the several provinces.

The Appellant desires to draw the attention of the Judicial Committee to some opinions advanced by the learned Chief Justice of the Court of Queen's Bench of Lower Canada (appeal s. 16) in rendering judgment, in which Appellant respectfully submits the Chief Justice was in error.

Misapprehension of Chief Justice Dorian, No. 1.

No. 1. The learned Chief Justice, in support of his argument that all property and civil rights fall within the exclusive jurisdiction of the legislatures of the provinces, stated (Appeal Book, page 446, lines 16 to 22):

30 "It has been held, I believe without a dissenting voice, that the Dominion Parliament could not grant to the Orange Society an Act of incorporation with franchises applying to the whole Dominion, and that local legislatures could alone create such corporations for their respective provinces, and bills for that purpose have accordingly been introduced and discussed in the Legislature of Ontario during several successive sessions."

The learned Chief Justice is entirely mistaken with regard to the matter herein alleged. No application was ever made to the Parliament of the Dominion of Canada for an Act to incorporate the Orange Society, and there is no holding or opinion, judicial or otherwise, on the constitutionality of incorporating the 40 Orange body "with franchises applying to the whole Dominion." What did actually occur was this: In 1873 two Acts were passed by the Legislature of the Province of Ontario, one an Act to incorporate "the Loyal Orange Association of Western Ontario," and the other to incorporate "the Loyal Orange Association of Eastern Ontario," which were reserved by the Lieutenant-Governor for the Governor-General's assent. The object of the reservation of the Acts by the

Error as to provincial Government was, doubtless, to escape the responsibility of assenting to Orange Bills them and to throw the onus upon the Dominion Executive.

Sir John Macdonald, then Minister of Justice, in an able State paper, after pointing out that the Acts "had a provincial object," and were "within the competency and jurisdiction of the provincial legislature," advised his Excellency as follows: "With respect to the present measures, the undersigned is of opinion "the Lieutenant-Governor might, (*sic in orig.*) not to have reserved them "for your Excellency's assent, as he had no instructions from the Governor-General in any way affecting these bills. They are entirely within the competence of the Ontario Legislature, and if he had sought advice from his legal 10 "adviser, the Attorney-General of Ontario, on the question of competence, he "would undoubtedly have received his opinion that these Acts were within the "jurisdiction of the provincial legislature. This is evident from the fact that " (as appears from the votes and proceedings of the legislature) the Attorney-General voted for and supported the bills as a member of the legislature. "Under these circumstances, the undersigned recommends that the Lieutenant-Governor be informed that your Excellency does not propose to signify your "pleasure with respect to these reserved Acts, or to take any action upon them. "The legislature will, at its next session, which must meet before the expiration "of the year within which, by the Constitution, your Excellency has the power 20 "to signify your pleasure, have the power, if it pleases, of considering these "measures anew and of re-enacting them as it pleases."—(Ontario Sessional Papers, vol. 6, part 3, no. 19.)

The advice of the Minister of Justice was adopted by the Dominion Cabinet and the Acts referred back to the Lieutenant-Governor of the Province of Ontario for his executive action.

Sir John Macdonald's memorandum on this subject has since been accepted as embodying the correct view. It is doubtless to it that the learned Chief Justice, under misapprehension, referred.

Misapprehension of
Chief
Justice
Dorion,
No. 2.

No. 2. The learned Chief Justice again fell into error in his remarks that the 30 Supreme Court decided on a reference from the Senate that the bill to incorporate the Christian Brothers as a body of teachers for the whole Dominion was beyond the power of the Parliament of Canada, and proceeds to remark: "This "shows, under the provisions of the Confederation Act, that civil rights and provincial objects are not to be determined by the extent of territory to which "interested parties may wish to apply the legislative action of the Parliament of "Canada, but by the character of such rights and objects." (Appeal Book, page 446, lines 22 to 30.)

The Appellant submits that the reasoning of the learned Chief Justice in this respect is ineffectual and inapplicable. The Acts in question were not entered 40 on the ground that they trenched upon the subject of education, which, by section 93 of the British North America Act is exclusively assigned to the local legislatures. Section 93 enacts: "Such provincial legislature may exclusively "make laws in relation to education, subject and according to the following provisions." (The provisions have no bearing on this point.)

A reference to pages 155 and 206 of the Journals of the Senate of Canada,

1876, vol. 18, will show that the learned Chief Justice Dorion has been led into error. The Minutes of the Senate are as follows:

The
Christian
Brothers
teaching
Bill.

Extract from the Proceedings of the Senate.

"Tuesday, 4th April, 1876.

"The Honorable David Christie, - Speaker.

"The Order of the Day being read for the consideration of the Bill intituled 'An Act to incorporate the Brothers of the Christian Schools in Canada,' as proposed to be amended by the Committee on Standing Orders and Private Bills;

Proceedings
of the
Senate.

"The Honorable Mr. Bellerose moved, seconded by the Honorable Mr. Armand,

"That the amendments of the said Committee be now concurred in.

"The Honorable Mr. Odell moved in amendment, seconded by the Honorable Mr. Botsford,

"That the question be not now put, but the Bill be referred to the Judges of the Supreme Court for their opinion, whether it is not a measure which falls within the class of subjects exclusively allotted to the Provincial Legislature, under section 92, sub-section 11 of the British North America Act, 1867, relating to The Incorporation of Companies with Provincial objects? and section 93 relating to Education?

"The question of concurrence being put thereon, the same was on a division resolved in the affirmative.

"The question being put on the main motion, as amended, the same was also on a division, resolved in the affirmative."

Extract from the Proceedings of Senate.

"Tuesday, 11th April, 1876.

"The Honorable the Speaker presented to the House the opinion of the Honorable Justices of the Supreme Court, in regard to the Bill intituled: 'An Act to incorporate the Brothers of the Christian Schools in Canada.'

"The same was read by the clerk, and is as follows:

"The Supreme Court of Canada.

"To the Honorable the Senate in Parliament assembled:

"In pursuance of the order of reference of your honorable house of the fourth day of April, 1876, we have considered the Bill intituled 'An Act to incorporate the Brothers of the Christian Schools in Canada,' and we are of opinion that it is a measure which falls within the class of subjects exclusively allotted to Provincial Legislatures under section 93 of the British North America Act, 1867.

Finding of
Supreme
Court.

"Given under our hands at the City of Ottawa, this eleventh day of April, 1876.

(Sd) "W. J. RITCHIE, J.

" "S. H. STRONG, J.

" "T. FOURNIER, J.

"I doubt if the Legislature by the 53rd section of the Supreme and Exchequer Courts' Act intended that the Judges should, on the reference of a Private Bill to them, express their opinion on the Constitutional right of the Parliament of Canada to pass the Bill, and for that reason I have not joined

“ in the accompanying opinion, and not because I differ from the conclusion of
 “ the learned Judges who have signed it.

“ April 11th, 1876.

“ WM RICHARDS, C. J.”

Misapprehension of
 Chief
 Justice
 Dorion,
 No. 3.

No. 3. The learned Chief Justice of the Court of Queen's Bench, in rendering judgment in this case, seems to have been under a misapprehension as to the actual holding of the Judicial Committee of Her Majesty's Privy Council in the case of *L'Union St. Jacques de Montréal vs. Belisle*, above referred to. In rendering judgment in the case of *McClanaghan vs. The St. Ann's Mutual Building Society of Montreal*, (3rd Legal News of Canada, page 61; 24 Lower Canada Jurist, page 164) which was adjudicated upon a short time before the present case, the learned Chief Justice made the following reference to the case of the *Union St. Jacques vs. Belisle*: “ In that case the Privy Council decided that a law authorizing benevolent associations in financial difficulties to compel parties to accept a fixed indemnity in lieu of the annuities to which they were entitled under the rules of the Society, was within the legislative power of the Legislature of the Province of Quebec—as affecting civil rights only.”

L'Union
 St. Jacques
 vs. Belisle.

The holding
 in L'Union
 St. Jacques
 vs. Belisle.

The learned Chief Justice is correct as to the facts upon which the judgment of the Privy Council was rendered, but the reasons of the judgment are inaccurately stated. The Privy Council did not sustain the Act of the Legislature of Quebec, 33 Vict. cap. 58, on the ground that it affected “ civil rights only,” but because “ the Act related expressly to a matter merely of a local and private nature in the Province . . . which, by the 92nd section of the British North America Act of 1867, passed by the Imperial Parliament, is assigned exclusively to the competency of the provincial legislature, and does not fall within the category of bankruptcy or insolvency, or any other class of subjects by the 91st section of the last-mentioned Act reserved for the exclusive legislative authority of the Parliament of Canada.” Lord Selborne, in rendering the judgment of the Committee, remarked (6 Law Reports, Privy Council Appeals, page 35) “ It would seem manifest that the subject matter of this Act, the 33rd Vict. cap. 58, is a matter of a merely local and private nature in the province, because “ it relates to a benevolent and benefit society incorporated in the city of Montreal “ within the Province, and which appears to consist exclusively of members who “ would be subject *prima facie* to the control of the provincial legislature. “ Clearly this matter is private; clearly it is local so far as locality is to be considered, because it is in the province and in the city of Montreal.”

It will be answered, with regard to the case of the “ *L'Union St. Jacques v. Belisle*, that the circumstances were *prima facie* local and private, and that there was no prior Act passed by the old Parliament of Canada with which the new one conflicted. The decision is therefore as Mr. Justice Ramsay pithily said: “ dead against the pretensions of Respondent.”

The case of *Dow vs. Black* (6th Law Reports, Privy Council Appeals, page 272) turned upon the same point. The Privy Council sustained the constitutionality of an Act of the provincial Legislature of New Brunswick, 33 Vict. cap. 41, entitled “ An Act to authorize the issuing of debentures on the credit of the lower district of the parish of St. Stephen, in the county of Charlotte,” which empowered the majority of the inhabitants of that parish to raise by local taxa-

Holding in
 Dow vs.
 Black.

tion a subsidy designed to promote the construction of a Railway," on the ground that a provincial legislature is enabled to impose direct taxation for local purposes upon a particular locality within the province, and that the Act in question related to "a matter of a merely local or private nature in the province." In *Dow and Black*, the decision of the case of *L'Union St. Jacques de Montreal vs. Belisle* was quoted and approved.—(Ibid. p. 182.)

No. 4. The learned Chief Justice says (Appeal Book, page 445, line 39) :

- 10 "There is no power given by the Confederation Act to the Dominion Parliament to amend or repeal an Act passed by a local legislature within the limits of its authority, and there is no concurrent authority conferred in this matter on the Dominion Parliament and the provincial legislatures."

Misapprehension of Chief Justice Dorion, No. 4.

- The Appellant submits that (saving the rights of the of the Crown to disallow any provincial Act that may conflict with the interests of the Empire, or of the Dominion generally, (Todd, Parliamentary Government in the British Colonies, pp. 343 and 344) within the limits of its authority the local legislature is supreme. But the question still remains unsolved : "What are the limits of its authority." In all matters in which it has supreme authority unquestionably the Dominion Parliament cannot over-ride its powers ; but the Appellant respectfully submits that there is error in the assumption that there is no concurrent authority conferred upon the Dominion Parliament and the provincial legislatures in matters of property and civil rights. The opinions and decisions cited above show conclusively that the property and civil rights connected with subjects that do not fall exclusively within the jurisdiction of the provincial legislatures are under the control of the Dominion Parliament, and that in these the authority of the Dominion Legislature is supreme.

No concurrent authority in legislation.

- The Dominion Parliament is clearly entitled to create a corporation with Dominion objects, and to confer powers upon it that may be identical with those accorded to a company incorporated in a province. Acts might be passed by the Provincial and the Dominion Legislatures incorporating companies for precisely the same objects, saving only that the limits of their operations would be different, according as they were authorised by the Provincial Legislature or by the Dominion Parliament. Thus in 1880 the Legislature of the Province of Quebec, by an Act, the 43 & 44 Vic. cap. 61, incorporated a number of French capitalists under the name of "Le Credit Foncier Franco-Canadien," for the purpose of lending money on mortgage and other securities in the Province of Quebec. This is a company with provincial objects, and the rights appertaining to it are "civil rights in the province." At the last session of the Dominion Parliament, the same company made application for and obtained an Act of incorporation, 44 Vic. cap. 58, for the exercise of precisely the same powers throughout the Dominion of Canada. These objects are general, and the civil rights appertaining to it are Dominion civil rights. During the last session of the Ontario Legislature, the same company obtained the passage of an Act, 44 Vic. cap. 51, authorizing it to exercise the same powers within that province. The latter Act incorporated the company for Ontario provincial purposes, and conferred upon it civil rights in the province of Ontario. Here is an illustration of the exercise of concurrent powers by the Dominion Parliament and the Provincial Legislatures, in which the pro-

Companies incorporated by both Parliament and legislatures.

Credit Foncier Franco-Canadien.

vincial Acts have provincial objects, and confer civil rights in Ontario and Quebec respectively. The Dominion Act has Dominion objects and confers civil rights in the whole Dominion.

The learned Chief Justice conceives that grave complications would result from permitting the Parliament of Canada and the Legislatures of the Provinces to exercise concurrent powers in regard to property and civil rights. The Appellant submits that, provided the legislation in each case be restricted to the class of subjects falling within the province of the powers of Parliament, or of the Legislature, as the case may be, these difficulties are largely imaginary. Such difficulties have not eventuated in the earlier stages of our constitutional history, 10 and are not likely to prove of frequent occurrence, as doubts and misapprehensions become dispelled by the aid of judicial interpretation. Under the powers conferred upon the Parliament of Canada it is impossible to argue that because a corporation obtains an Act in one province for provincial objects, and afterwards obtains an authorization in another province to carry on its business there, that the Dominion Parliament is thereby debarred, without express restriction, to incorporate a company for precisely the same objects, conferring upon it powers to acquire property and to transact its business throughout the whole of the Dominion, or throughout two or more provinces of it. In fact, after the passing of the Act 44 Vic. cap. 58, being an Act "to enlarge and extend the 20 powers of the "Credit Foncier Franco-Canadien" by the Dominion Parliament, another Act was passed by the Dominion Legislature, namely, 44th Vic. cap. 51, being an Act to incorporate the "Credit Foncier for the Dominion of Canada," which had similar objects and similar powers to those already conferred upon the "Credit Foncier Franco-Canadien" in the Provinces of Quebec and Ontario and in the Dominion of Canada.

Isolating
sections
91 and 92.

Some of the learned Judges in Canada who have commented upon sections 91 and 92, have found a conflict in the powers vested in the Dominion Parliament and the Provincial Legislatures, arising from the use of the word exclusively in designation of the subjects of provincial jurisdiction. This has arisen 30 largely from considering section 92 of the British North America Act by itself without regard to section 91. It is plain that the two sections cannot be isolated and should be read together, and that where the plain intent of the Act is to vest the general government with the sovereign jurisdiction, reserving the *residuum* merely for the provincial authority, the terms conveying that residuum should not be extended beyond their natural purport, nor so as to render them at variance with the other provisions of the Act. The Appellant submits that clauses 91 and 92 when interpreted by the best rules of legal construction are not at variance and that misapprehension has arisen from isolating them, in construction disregarding their terms.

One of the judges, Mr. Justice Strong, of the Supreme Court of Canada, in the case of *Severn vs. The Queen* (Canada Supreme Court Reports, Vol. 3, page 166) said : 40

"All powers conferred in section 92 were to be read and regarded as exceptions to those enumerated in section 91, and by that section given to Parliament. That section 92 therefore was to be construed as if it had been contained in an Act of the Imperial Parliament separate and apart from section "91, and is therefore to be read independently of that section."

That the two sections must be considered together and not "independently," Appellant submits does not admit of serious controversy. Lord Selborne and Sir James Colville, in the cases above cited, so considered them.

- "The office of a good expositor of an Act of Parliament," said Lord Coke in the *Lincoln College* case, "is to make construction on all the parts together and not of one part only: *Nemo enim aliquam partem recte intelligere potest antequam totum iterum atque iterum perlegerit*"; and again in Inst. 381, he says that "it is the most natural and genuine exposition of a statute to construe one part of the statute by another part of the same statute that best expresseth the meaning of the makers," . . . and "this exposition is *ex visceribus actus*." Rules for construction of Statutes. Lord Coke's opinion.
- "Nothing is better settled," said Sir Roundell Palmer (now Lord Selborne and Lord High Chancellor of England, on the Collier appointment, Feb. 1872, see 3 Hansard 209, page 685, "than that a statute is to be expounded not according to the letter but according to the meaning and spirit of it. What is within the true meaning and spirit of a statute is as much law as what is within the very letter of it, and that which is not within the meaning and spirit, though it seems to be within the letter, is not the law and is not the statute. That effect should be given to the object and spirit and meaning of a statute is a rule of legal construction, but the object, spirit and meaning must be collected from the words used in the statute. It must be such an intention as the Legislature has used fit words to express." Sir Roundell Palmer's opinion.

The word "exclusively" must give way if in conflict with the general tenor of the statute. Appellant, however, does not find that it is.

"A Court of Law will reject words as surplusage if it is clear that otherwise the manifest intention of the Legislature would be defeated." (Hardcastle on The Construction and Effect of Statutory Law, page 42.)

- In *River Wear vs. Adamson* (Law Reports, 2 Appeal Cases, House of Lords, 764) Lord Blackburn said: "I believe that it is not disputed that what Lord Wensleydale used to call 'the golden rule' is right, namely, that we are to take the whole Statute together and construe it all together, giving to the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification, and to justify the Court in putting on them some other signification, which, though less proper, is one which the Court thinks the words will bear." Lord Blackburn's opinion.

In this case, the Appellant submits, no difficulty results from the use of the word "exclusively." But if such there were, it is obvious the whole tenor of the Confederation Act over-rides it.

- In *Bywater and Brandling* (7 Barnwell & Cresswell Reports, page 660) Lord Tenterden said: "In construing Acts of Parliament we are to look not only at the language of the preamble or of any particular clause, but at the language of the whole Act; and if we find in the preamble, or in any particular clause, an expression not so large and extensive in its import as those used in other parts of the Act, and if upon a view of the whole Act, we may conclude from the more large and extensive expressions used in other parts, the real intention of the Legislature, it is our duty to give effect to the larger expressions, not-

Lord Tenterden's opinion.

"withstanding phrases of less extensive import in the preamble or in any particular clause."

See also *Stradling vs. Morgan*, Plowden's Report, p. 204; and 3 Canada Supreme Court Reports, p. 27; *Heydon's case*, 3 Coke's Reports, 8.

Sovereign
powers to
Parliament,
residuum
to Legis-
latures.

If, then, there is no apparent conflict between the sections, effect must be given to the general intention of the legislature. The use of the word "exclusively" in section 92 has created much, and the Appellant submits unnecessary, misapprehension. An examination of the classes of subjects, assigned to the Provincial legislatures, shews that they are restricted in every instance to subjects of strictly provincial concern, and the key note of the whole of section 92 may be found in its last clause "generally all matters of a merely local or private nature in the Province." Viewed in this way the general power to legislate is conferred upon the Dominion Parliament and the *residuum* merely is left with the Provincial legislatures. 10

There need be no difficulty in giving the word "exclusively" its natural construction. The preamble of the British North America Act clearly shows that the object was the Federal Union of the Provinces of Canada, Nova Scotia and New Brunswick, under the Crown of the United Kingdom of Great Britain and Ireland, "with a constitution similar in principle to that of the United Kingdom." To the Federal power was therefore assigned all matters concerning "the peace, order and good government of the Dominion generally;" to the several provinces were assigned, in a word, their own private concerns. As Mr. Justice Gwynne of the Supreme Court of Canada said, in rendering judgment in the case of the Citizens Insurance Co. *vs.* Parsons (4 Supreme Court Reports, p. 347): "The object of the British North America Act was to lay in the Dominion constitution the foundation of a nation; not to give to the provinces carved out of, and subordinate to, the Dominion any thing of the nature of a national or quasi-national existence." 20

Such being the obvious intention of the Act, any apparent verbal discrepancy must give way to that obvious intention of the Imperial legislature. 30

The view thus laid down also has the distinguished sanction of a recent dictum; the present Lord Chancellor (Lord Selborne) in rendering judgment in the recent case of *Caledonia Canal Company vs. The North British Railway Company*, said:

"The more literal construction of a section of a statute ought not to prevail, if it is opposed to the intention of the legislature as apparent by the statute; and if the words are sufficiently flexible to admit of some other construction by which that intention would be better effected."—(VI Law Reports, House of Lords, page 114.)

In conclusion, the Appellant submits:

40

Appellant's
legal propo-
sitions.

1o. That the objects of the Act 22 Victoria, cap. 66, are general for the entire Province of Canada as then constituted, and that the powers and civil rights appertaining thereto extend over the whole territory of the old Province of Canada, and are not restricted to either of the Provinces into which it was divided by the Confederation Act.

26. That these civil rights are more extensive than could be conferred upon any Corporation created by the legislature of the province, and that the legislature of a province is incompetent to amend or repeal a statute which conferred powers beyond its competency to create.

30. That, under the statute 22 Vic. cap. 66, the Petitioner is invested with the civil right of eligibility or qualification for membership of the Board, Respondents; that such civil right is not, within the meaning of section 92 of the British North America Act, a civil right in the province of Ontario or Quebec merely, but extends over and may be invoked in any part of the old Province of Canada.

40. That the Act 22 Vic. cap. 66, was and is not an Act with a *provincial* (Ontario or Quebec) *object*, or relating to property or civil rights *in a province*, or to matters of a "merely local or private nature in a province"; but is general in its objects, scope and character, and confers "civil rights," that may be invoked in both provinces without being derived from either.

The Appellant has secured the assent of three Judges of the Court of Queen's Bench to these propositions, but one of the Judges concurring in them held Appellant had "no interest or right to obtain the injunction." (Appeal Book, pp. 450 and 451.) The Honorable Judge finds that "*the Appellant, who refused to accede to union, and who claimed and still claimed to belong to a separate body, is no longer a member of that Church.*" (The Presbyterian Church of Canada in connection with the Church of Scotland.)

It is admitted by Respondents—Appeal Book, p. 154 *et seq.*—that the Appellant came to Canada a member and minister of the Church of Scotland, that he was received in Canada by the Presbyterian Church of Canada in connection with the Church of Scotland, that he was a beneficiary of the Clergy Reserves fund, that he renounced his right to that fund upon certain conditions and upon "the fundamental principle, which it shall not be competent for the Synod at any time to alter, unless with the consent of the Ministers granting such power and authority; that the interest of the fund shall be devoted, in the first instance, to the payment of £112 10 0 each, and that the next claim to be settled, if the fund shall admit, and as soon as it shall admit of it, to the £112 10 0 be that of the ministers now on the Synod roll, and who have been put on the Synod's roll since the 9th May, 1853; and also that it shall be considered a fundamental principle that all persons who have a claim to such benefits shall be ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and that they shall cease to have any claim on, or be entitled to any share of said commutation fund whenever they shall cease to be ministers in connection with the said Church." (Appeal Book, pages 161, 162.)

Now the Appellant adhered to the Church up to the time of the secession in 1875, and before the union was effected in 1875 he caused a notarial protest to be served upon the Synod through its Moderator. By the law of the Province of Quebec the acts of a notary are authentic. The formal protest may be found at length in page 137 of the Appeal Book. He and others also dissented in the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, before the union was effected, against the resolution favouring union,

Assented to
by majority
of Court of
Appeal.

The funda-
mental
principle
upon which
the Temporalities Fund
was created.

and, with others who adhered to him, caused a formal protest to be entered on the minutes. The following is a copy of the Protest from the Synod's minutes of the 15th June, 1875 (Appeal Book, page 70) :

Protest
against
Union.

" We, ministers and elders, members of the Synod, heartily attached to the
" Church, hereby dissent from the resolution of this Court to repair to the Victo-
" ria Hall for the purpose of consummating the proposed Union with the other
" Presbyterian Bodies and thereby to form the General Assembly of the Presby-
" terian Church in Canada. We further protest against the declaration that the
" United Church shall be considered identical with the Presbyterian Church of
" Canada in connection with the Church of Scotland, inasmuch as this Synod has
" no power *per saltum*, to declare other Bodies in addition to itself to be possessed 10
" of the rights, privileges and benefits to which this Church is now entitled. We
" declare, therefore our continued attachment to the Presbyterian Church of
" Canada in connection with the Church of Scotland and do hereby enter our
" protest against the empowering of the present Moderator to sign in its name
" the preamble and basis of Union and the resolutions connected therewith. And
" further, we, ministers and elders of this Synod, holding views opposed to Union
" on the present basis, do protest against the carrying out of the contemplated
" arrangements for the consummation of the proposed Union, and declare that, if
" consummated, we will claim and continue to be the Presbyterian Church of
" Canada in connection with the Church of Scotland."

20

Signed by
Appellant.

" (Signed)

" ROBERT DOBIE,
" WM. SIMPSON,
" ROBERT BURNET,
" DAV. WATSON,
" J. S. MULLAN,
" WM. McMILLAN,
" THOMAS McPHERSON,
" RODERICK McCORMON,
" JOHN DAVIDSON,
" JOHN MACDONALD."

30

No break in
the connec-
tion.

The minority protested against the union, and intimated by their protest that they would "claim and continue to be the Presbyterian Church of Canada in connection with the Church of Scotland." After the majority had left the building in which the Synod was assembled, the minority continued the deliberations of the Presbyterian Church of Canada in connection with the Church of Scotland, There was no break in the connection or continuity of the Presbyterian Church of Canada in connection with the Church of Scotland. It is clearly proved that the Presbyterian Church of Canada in connection with the Church of Scotland has continued its existence apart from the Presbyterian Church in Canada since 1875; that now, and at the institution of this suit, it has and had a large staff of 40
clergymen, numerous congregations connected with it, and a great number of adherents throughout the whole of the Province of Canada, including some of the most prominent and influential men in the Colony. It is difficult therefore to perceive how the Appellant is a member of "a separate body" and not of "the Presbyterian Church of Canada in connection with the Church of Scotland." Even the Acts of the Legislature that are impugned in this case, recognize that

some of the ministers would not join the Union and would continue the old Church.

Some of the learned ecclesiastics, examined in this case, attempted to maintain the identity of the "United Church" with "the Presbyterian Church of Canada in connection with the Church of Scotland." The fallacy of this view is apparent. On the same assumption each of the other high contracting parties might contend that it was identical with it. If each of the four contracting Churches are identical with the United Church, three of the component parts must be ignored on every occasion that the identity is attempted to be proved; and if the four contracting bodies separately attempted to apply the rule at the same time the results would be ruinous to the existence of "the United Church."

It is clear that "the Presbyterian Church in Canada" must be regarded as a new body: its elements are new. It is the result of an amalgamation, and the assumption of its identity with "the Presbyterian Church of Canada in connection with the Church of Scotland" is at variance with the fact that "the Presbyterian Church of Canada in connection with the Church of Scotland," though with diminished numbers, still exists, in full vigour and with perfect organization. The Appellant has adhered to his Church. Those who left it to join the new Body are no longer beneficiaries under the first fundamental principle prescribed at the creation of the Fund. The Appellant certainly did not cease to be a member and a minister of the Presbyterian Church of Canada in connection with the Church of Scotland. If he did, it was not for want of effort to remain in and preserve it.

The Synod had no power to affect the status of the Appellant: he was and always has been acknowledged to be a minister of the Presbyterian Church of Canada in connection with the Church of Scotland, in good standing. He relies upon the Act of Parliament 22 Victoria, cap. 66, which consecrates the conditions upon which the Temporalities Board was formed and was to be administered. The Synod is powerless to modify these conditions: they can only be affected by the action of the legislature. If the Acts of the provincial legislature that purport to modify them are constitutional, the Appellant is without recourse; but Appellant submits, and in this respect is supported by a majority of the Judges of the Court of Queen's Bench of the Province of Quebec, that the Acts in question are unconstitutional and *ultra vires*, and that the Act of the old Province of Canada 22 Victoria, cap. 66, is still in force.

The competency of the Legislature of a province, under Confederation, to amend or repeal a statute cannot exceed its competency to create.—(Section 129 British North America Act, 1867.) The provincial legislature has no power to confer civil rights so extensive as those established under the provisions of the Statute 22 Victoria, cap. 66. It cannot amend or repeal what it cannot create.

Downing street, London, July, 1881.

D. MACMASTER,
Of Counsel for Appellant.

"The united Church" a new body.

Limit of Provincial power.

In the Privy Council.

ON APPEAL FROM THE COURT OF
QUEEN'S BENCH FOR LOWER CANADA
IN THE PROVINCE OF QUEBEC
(APPEAL SIDE).

BETWEEN

THE REVEREND ROBERT DOBIE,
Appellant

AND

"BOARD FOR THE MANAGEMENT
OF THE TEMPORALITIES FUND
OF THE PRESBYTERIAN CHURCH
OF CANADA IN CONNECTION
WITH THE CHURCH OF SCOT-
LAND" ET AL. - - - *Respondents*

ARGUMENT OF MR. MACMASTER, OF COUNSEL
FOR APPELLANTS.

No. IN RECORD.	DESCRIPTION OF DOCUMENTS.	DATE.	PAGE IN RECORD.
30	Affidavit of James Croil - - - - - filed	25th March 1879 -	125
31	Affidavit of the Rev. John Jenkins, D.D. - - - - - filed	4th April 1879 -	127
32	Exception to three Affidavits filed by Respondents - - - - - filed	5th April 1879 -	128
33	Plea - - - - - filed	11th March 1879 -	128
34	Declaration of the Rev. Gavin Lang - - - - - filed	8th March 1879 -	134
35	Declaration of Sir Hugh Allan - - - - - filed	8th March 1879 -	135
36	Petitioner's List of Exhibits - - - - - filed	21st March 1879 -	136
37	(Petitioner's Exhibit M.N.) Protest at the request of Joseph Hickson, <i>et al.</i> , against The Moderator of the Presbyterian Church of Canada in connection with the Church of Scotland - - - - - dated	15th June 1875 -	137
38	Petition for Deposit and Notice thereof - - - - - filed	9th June 1879 -	138
39	Respondents' Exception to Judgment rendered this day by the Honorable Mr. Justice Jetté on Petition - - - - - filed	14th June 1879 -	139
40	Answer to Pleas - - - - - filed	18th June 1879 -	140
41	Respondents' Answer to Petitioner's Answer to Respondents' Plea - - - - - filed	12th April 1879 -	145
42	Deposition of the Rev. Gavin Lang, produced by Petitioner - - - - - filed	25th June 1879 -	147
43	Admission of Parties - - - - - filed	27th June 1879 -	154
44	(Respondents' Exhibit No. 31, filed with Admissions) Copy of Extracts from the Records of the Presbytery of Glengarry, dated at Martintown - - - - -	8th June 1878 -	167
45	(Respondents' Exhibit No. 32, filed with admissions) Copy of <i>Quebec Official Gazette</i> , dated and published at Quebec, 19th June 1875—Extract - - - - - filed	27th June 1879 -	168
46	Deposition of the Rev. John McDonald, produced by Petitioner, - - - - - filed	28th June 1879 -	169
47	Deposition of Douglas Brymner, produced by Petitioner, - - - - - filed	2nd July 1879 -	184
48	Deposition of the Rev. Gavin Lang, produced by Petitioner, - - - - - filed	2nd July 1879 -	225
49	Deposition of Sir Hugh Allan, produced by Petitioner, - - - - - filed	2nd July 1879 -	227
50	Deposition of James Croil, produced by Petitioner, - - - - - filed	2nd July 1879 -	229
51	Deposition of James S. Mullan, witness for Respondents, - - - - - filed	2nd July 1879 -	237
52	Deposition of Rev. John Hugh Mackerras, produced by Respondents - - - - - filed	7th Ju'y 1879 -	242
53	Deposition of Rev. John Jenkins, D.D., produced by Respondents - - - - - filed	9th July 1879 -	277
54	Deposition of Rev. Robert Campbell, produced by Respondents - - - - - filed	15th July 1879 -	304
55	Deposition of Rev. Gavin Lang, produced by Respondents, - - - - - filed	15th July 1879 -	339
56	Petitioner's List of Exhibits - - - - - filed	1st August 1879 -	345
57	(Petitioner's Exhibit X) Blank form of Cheque, used by the Temporalities Board of the Presbyterian Church of Canada in connection with the Church of Scotland - - - - - filed	1st August 1879 -	347
58	(Petitioner's Exhibit Z1.) Acts and Proceedings of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, on and since June 15, 1875 - - - - - filed	1st August 1879 -	347

No. IN RECORD.	DESCRIPTION OF DOCUMENTS.	DATE.	PAGE IN RECORD.
59	(Petitioner's Exhibit Z2.) Letter to the Rev. Gavin Lang, from the Rev. R. H. Muir, on behalf of the Colonial Committee of the Church of Scotland recognizing the Presbyterian Church of Canada in connection with the Church of Scotland, dated 3rd June - - filed	2nd July 1879 - -	370
60	(Petitioner's Exhibit Z3.) Letter from Rev. G. W. Sprott to Rev. Gavin Lang, dated 16th June - - filed	1st August 1879 - -	371
61	(Petitioner's Exhibit Z5.) Extracts from the Acts and Proceedings of the General Assembly of the Church of Scotland, - - - - - filed	1st August 1879 - -	371
<i>In the Court of Queen's Bench.</i>			
62	Reasons of Appeal - - - - - filed	3rd March 1880 - -	375
63	Answer to Reasons of Appeal - - - - - filed	16th February 1880 - -	376
64	Appellant's Case - - - - - filed	16th March 1880 - -	377
64A	Remarks of Mr. Justice Jetté, on rendering the judgment appealed from - - - - -	- - - - -	383
65	Respondents' Case - - - - - filed	24th February 1880 - -	399
66	Proceedings in the Court of Queen's Bench - - from	30th Dec. 1879 to 11th Nov. 1880 - -	425
66A	Judgment of the Court of Queen's Bench - - rendered	19th June 1880 - -	427
66B	Proceedings on motion for leave to appeal to Her Majesty in Her Privy Council - - - - -	- - - - -	427
66C	Order of Court granting leave to appeal to Her Majesty in Her Privy Council - - - - -	- - - - -	428
66D	Proceedings in execution of Bail Bond - - - - -	- - - - -	428
67	Bail Bond - - - - - filed	30th September 1880 - -	428
68	Notice of day fixed to prepare Record - - - - - filed	8th November 1880 - -	431
68A	Notice to fix case for appeal - - - - - filed	11th November 1880 - -	432
69	List of Documents and Papers to be inserted in the Transcript - - - - - filed	11th November 1880 - -	433
70	List of Exhibits (Books) sent to the Registrar of Her Majesty's Privy Council, according to order given by the Honorable Sir Antoine Aimé Dorion, Chief Justice of Court of Queen's Bench - - - - -	- - - - -	436
71	Certificate of Clerk of Appeals of Her Majesty's Court of Queen's Bench - - - - -	- - - - -	438
72	Certificate of Chief Justice of the Court of Queen's Bench - - - - -	- - - - -	439
73	Index of Papers composing the Record in this cause - - - - -	- - - - -	440
74	Judges' Reasons - - - - -	- - - - -	444
		Sir A. A. Dorion, Knight, Chief Justice - - - - -	444
		Mr. Justice Monk - - - - -	449
		Mr. Justice McCord - - - - -	450
		Mr. Justice Ramsay (dissenting) - - - - -	452

In the Privy Council.

P375D - 15

ON APPEAL FROM THE COURT OF QUEEN'S BENCH
FOR LOWER CANADA, IN THE PROVINCE
OF QUEBEC, (APPEAL SIDE.)

BETWEEN

THE REVEREND ROBERT DOBIE, - - - *Appellant.*

AND

"BOARD FOR THE MANAGEMENT OF THE TEM-
PORALITIES FUND OF THE PRESBYTERIAN
CHURCH OF CANADA IN CONNECTION WITH
THE CHURCH OF SCOTLAND" ET AL., - *Respondents.*

RECORD OF PROCEEDINGS.

TRANSCRIPT of Record and Proceedings in the Courts of the Province of Quebec,
appealed from in a cause between

The Reverend Robert Dobie, - - - - Appellant.

and

"Board for the Management of the Temporalities Fund
of the Presbyterian Church of Canada in connec-
tion with the Church of Scotland" et al. - Respondents.

Canada, }
Province of Quebec. }

In the Court of Queen's Bench for Lower Canada,
(Appeal Side.)

RECORD.

In the
Court of
Queen's
Bench.

10 TRANSCRIPT of all the Rules, Orders and Proceedings found in the Record
and Register of Her Majesty's Court of Queen's Bench for Lower Canada, in the
Province of Quebec (Appeal side), in the matter lately pending of the Reverend
Robert Dobie, of Milton, in the county of Halton, and Province of Ontario,
Minister, Petitioner, and "Board for the Management of the Temporalities Fund of
the Presbyterian Church of Canada in connection with the Church of Scotland,"
a body politic and corporate, duly incorporated, and having an office and prin-
cipal place of business in the city of Montreal, and the Reverend Daniel M.
Gordon, Bachelor of Divinity, Minister of St. Andrew's Church of Ottawa, Pro-

RECORD. vince of Ontario, Reverend John Cook, Doctor of Divinity, Minister of St. Andrew's Church, Quebec, Province of Quebec, Reverend John Jenkins, Doctor of Divinity, Minister of St. Paul's Church, of Montreal, Province of Quebec, Reverend Gavin Lang, Minister of St. Andrew's Church, of Montreal, Province of Quebec, Sir Hugh Allan, of Ravenscraig, Montreal, Province of Quebec, John L. Morris, Esquire, Advocate, of Montreal, Province of Quebec, Robert Dennistoun, Esquire, County Judge, of Peterborough, Province of Ontario, and William Walker, Esquire, Merchant, of Quebec, Province of Quebec, the Reverend John H. Mackerras, of Kingston, in the Province of Ontario, William Darling, Esquire, and Alexander Mitchell, both Merchants of the city of Montreal, afore-
In the Court of Queen's Bench. said, Respondents, transmitted to the Court of Queen's Bench upon the Appeal side thereof, in virtue of a writ of appeal sued out by the said Petitioner, and to be transmitted on an appeal to Her Majesty in Her Privy Council.

DOCUMENT II.

No. 1.
 Writ of
 Appeal,
 dated 30th
 Dec. 1879.

Canada,
 Province of Quebec, }
 (L.S.)

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith :

To the Chief Justice and Justices of our Superior Court for Lower Canada, Greeting :

WHEREAS, in the Plaint lately pending in our Superior Court for Lower Canada, sitting in the City of Montreal, in the District of Montreal, before you, between :

The Reverend Robert Dobie, of Milton, in the county of Halton and Province of Ontario. Minister, Petitioner, and "Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," a body politic and corporate, duly incorporated and having an office and principal place of business in the city of Montreal, and the Reverend Daniel M. Gordon, Bachelor of Divinity, Minister of St. Andrew's Church, of Ottawa, Province of Ontario, Reverend John Cook, Doctor of Divinity, Minister of St. Andrew's Church, Quebec, Province of Quebec, Reverend John Jenkins, Doctor of Divinity, Minister of St. Paul's Church of Montreal, Province of Quebec, Reverend Gavin Lang, Minister of St. Andrew's Church of Montreal, Province of Quebec, Sir Hugh Allan, of Ravenscraig, Montreal, Province of Quebec; John L. Morris, Esquire, Advocate of Montreal, Province of Quebec; Robert Dennistoun, Esquire, County Judge, Peterborough, Province of Ontario; William Walker, Esquire, Merchant of Quebec, Province of Quebec, the Reverend John H. Mackerras, of Kingston, in the Province of Ontario, William Darling, Esquire, and Alexander Mitchell, both Merchants of the city of Montreal, afore-said, Respondents.

He, the said Reverend Robert Dobie, as by his complaint (we are informed) is aggrieved by the final judgment, on the twenty-ninth day of December, eighteen hundred and seventy-nine, We, willing that the said judgment should be revised and examined by our Court of Queen's Bench for Lower Canada, and full and speedy justice done in the premises, do command you, That you, or any

of you, do send, under your signatures, and the seal of our said Superior Court, all the original papers and proceedings in the cause, and a transcript of all the rules, orders and proceedings found in the record or register of our said Superior Court, concerning the same, to our said Court of Queen's Bench, that the Judges thereof may have them before them, at their Court House, in our city of Montreal, in our Province of Quebec, on Monday, the nineteenth day of January next, that revising and examining the same they may cause further to be done thereupon what of right, according to the laws and custom of our said Province, is meet to be done.

10 In witness whereof, we have caused the seal of our said Court of Queen's Bench to be hereunto affixed.

At our city of Montreal, this thirtieth day of December, in the year of our Lord one thousand eight hundred and seventy-nine, in the forty-third year of our reign.

C. DE GRANDPRÉ, Deputy Clerk of Appeals.
MACMASTER, HALL & GREENSHIELDS, Attys. for Appellant.

(On the back.)

The execution of this writ appears by the schedules hereunto annexed.

GEO. H. KERNICK,
Depy. P. S. C.

20

(Endorsed.)

Writ of Appeal, returnable the nineteenth day of January, 1880. Returned and filed in the Appeal Office in the city of Montreal this twenty-second day of January, 1880.

SCHEDULES ANNEXED TO THE WRIT.

Schedule A.

Province of Quebec, }
District of Montreal. } In the Superior Court for Lower Canada.

*In the
Superior
Court.*

20 TRANSCRIPT of all the Rules, Orders and Proceedings found in the Record or Register of Her Majesty's said Superior Court for Lower Canada, sitting in the District of Montreal, in a certain cause lately adjudged in the said Court, and wherein the Reverend Robert Dobie was Petitioner, and "Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland" *et al.*, were Respondents, and transmitted to the Honorable Court of Queen's Bench, upon the appeal side thereof, in virtue of the writ of appeal sued out in this cause.

No. 2.
Summary of
Proceedings.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 1.
Writ of
Appeal,
dated 30th
Dec. 1879.
—continued.

RECORD.

In the
Superior
Court.

No. 2100.

The Reverend Robert Dobie, of Milton, in the county of
Halton, in the Province of Ontario and Dominion of
Canada, Minister, - - - - - Petitioner.

vs.

No. 2.
Summary of
Proceedings.
—continued.

“ Board for the Management of the Temporalities Fund of
the Presbyterian Church of Canada, in connection with
the Church of Scotland,” a body politic and corporate,
duly incorporated, and having an office and its principal
place of business in the city of Montreal, the
Reverend Daniel M. Gordon, Bachelor of Divinity,
Minister of St. Andrew's Church of Ottawa, Province
of Ontario; Reverend John Cook, Doctor of Divinity,
Minister of St. Andrew's Church of Quebec, Province of
Quebec; Reverend John Jenkins, Doctor of Divinity,
Minister of St. Paul's Church of Montreal, Province of
Quebec; Reverend Gavin Lang, Minister of St. An-
drew's Church of Montreal, Province of Quebec; Sir
Hugh Allan, of Ravenscraig, Montreal, Province of
Quebec, John L. Morris, Esquire, Advocate, of Mont-
real, Province of Quebec, Robert Dennistoun, Esquire,
County Judge, of Peterborough, Province of Ontario,
William Walker, Esquire, Merchant, of Quebec, Pro-
vince of Quebec, the Reverend John H. Mackerras, of
Kingston, in the Province of Ontario, William Darling,
Esquire, and Alexander Mitchell, both Merchants of
the city of Montreal, aforesaid - - - Respondents.

The 31st December 1878.

In chambers.

Coram.

The Honorable Mr. Justice Jetté.

The Reverend Robert Dobie, personally and *ès qualité*, by his attorneys, Mes-
sieurs Macmaster, Hall & Greenshields, files petition praying that for the reasons
set forth in said petition, a writ of injunction may issue against the said Respon-
dents, enjoining them and each of them to appear before this honorable Court or
a Judge thereof, to answer the present petition.

That the Act of the Legislature of the Province of Quebec, intituled “ An
“ Act to incorporate the Board for the Management of the Temporalities Fund of
“ the Presbyterian Church of Canada in connection with the Church of Scot-
“ land,” passed in the thirty-eighth year of Her Majesty's reign (38 Vic., chap. 64) 40
may be adjudged and declared to be unconstitutional and illegal, and be rescinded
and revoked, and that the subject matter thereof, as therein presented, may be
declared to be *ultra vires* of the Legislature of the said Province of Quebec, and
that it be declared and adjudged, by the judgment to be rendered upon this peti-
tion, that the said corporation, Respondents, are acting and taking proceedings

beyond their power, and without having fulfilled the formalities prescribed by law and by the Act of Incorporation thereof, by permitting the said last named persons to act as members of the said Board, and of the said Corporation, without having been elected as members of such Board in the manner provided by law and by the said Act of Incorporation, and, further, by administering, intermed-

RECORD.

—
In the
Superior
Court.
—

No. 2.
Summary of
Proceedings.
—continued.

10 ber of members of the said Corporation elected in the manner provided by law, and in the Act of Incorporation thereof to constitute a quorum of the said Corporation or of the said Board, and that it be further adjudged and declared that the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, John L. Morris, Esquire, Reverend John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire, have no right or authority to sit, deliberate or act as members of the said corporation or Board, and thereupon, further prays that the said Corporation be by such judgment restrained from acting and proceeding in respect of the duties imposed upon them by the said Act of
20 Incorporation of the 22nd Vic., chap. 66, and from administering, using, dispensing or disposing of the funds and property of the said Corporation; and be ordered and enjoined not to act in respect of the said duties and powers, and in respect of the said funds and property, until an adequate and sufficient number of members thereof shall have been duly elected in the manner and with the formalities provided by law and by the said last mentioned Act of Incorporation. And, further, that the Respondents, Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, Reverend John Mackerras, William Darling, Esquire, Alexander Mitchell and John L. Morris, Esquire, be restrained from acting as
30 members of the said Board, and be enjoined not to sit or act as, or perform any of the functions of members of the said Board, unless and until they shall be duly elected members thereof, in the manner and with the formalities provided by the said Act of Incorporation of the said Board, 22 Vic., chap. 66.

And the Petitioner further prays that it be ordered, that the said Respondents, and each and all of them, do forthwith suspend any and all acts and proceedings in their several capacities respectively, in respect of the administration of the said funds and property, and in respect of all matters in dispute in this cause.

40 That it be adjudged and declared that the fund administered by the corporation, Respondents, amounting to the sum of four hundred and sixty-three thousand, three hundred and seventy-one dollars and fifty-two cents (\$463,371.52.), is a fund held in trust by them for the benefit of the Presbyterian Church of Canada in connection with the Church of Scotland, and for the benefit of the ministers and missionaries who retain their connection therewith, and who have not ceased to be ministers thereof, and for no other purpose whatever.

That the said Reverend John Cook, Reverend James C. Muir and Reverend George Bell, be declared to have ceased to be members of the Presbyterian Church

RECORD. of Canada in connection with the Church of Scotland, and not be entitled to any sum of money or benefit from the funds administered by Respondents.

*In the
Superior
Court.*

No. 2.
Summary of
Proceedings.
—continued.

That the said Reverend John Fairlie, Reverend W. Morrison and Reverend Charles A. Tanner be declared not entitled to receive any sum of money whatever from the funds administered by Respondents, and that Respondents be enjoined and ordered not to pay said Reverend John Cook, Reverend James C. Muir, Reverend John Bell, Reverend John Fairlie, Reverend David W. Morrison and Reverend Charles A. Tanner, or any of them, any sum of money whatever from the capital or revenues of the funds administered by them, and, further, that the said corporation, Respondents be adjudged and ordered not to pay to them, the said Reverend John Cook, Reverend James C. Muir, Reverend John Bell, Reverend John Fairlie, Reverend David W. Morrison, Reverend Charles A. Tanner, or to any other person whomsoever, any sum of money whatever out of the capital or revenues or interest accrued and to accrue on said fund, under pain of all legal penalties, until such further order shall be made upon the said petition, as to this Honorable Court, or any Judge thereof shall seem meet and expedient. And the said Petitioner hereby declares his readiness to give good and sufficient security, in the manner prescribed by and to the satisfaction of the said Court or of a Judge thereof, in the sum of six hundred dollars or any higher sum fixed by the said Court or Judge, for the costs and damages which the Respondents may suffer by reason of the issue of said writ of injunction, and the said Petitioner hereby offers, as such security, James S. Hunter, notary public, and Joseph Hickson, railway manager, both of the city and district of Montreal, who will justify as to their sufficiency if required—the said Petitioner reserving the right to take such other and further conclusions in the matter, as he may be advised and permitted, the whole with costs of suit and of exhibits against such of said Respondents as may contest the present action, but without costs against such of the Respondents as may declare that they abide the order of the Court, of which costs the attorneys of Petitioner pray distraction.

The Petitioner files a list and three affidavits.

30

The order on foregoing petition, is as follows :

I, the undersigned, one of the Justices of the Superior Court for Lower Canada, sitting in the district of Montreal, having read the foregoing petition and the affidavits and documentary evidence produced in support of the same, and seeing further the offer of the said Petitioner to give good and sufficient security in the manner prescribed by me and to my satisfaction, I do approve of the security offered by Petitioner, and do order and prescribe that the said sureties offered, to wit : James S. Hunter, notary public, and Joseph Hickson, railway manager, both of the city and district of Montreal, do enter into a Bond before me to the extent of twelve hundred dollars for costs and damages which the Respondents may suffer by reason of the writ of injunction herein ordered to issue ; they then and there justifying as to their sufficiency upon oath ; and that thereupon a writ of injunction do issue according to the prayer of the said petition, to summon the Respondents to be and appear before any one of the Honorable Justices of the said Superior Court at Montreal, aforesaid, on the thirty-first day of January next, (eighteen hundred and seventy-nine) to answer the premises ; and pending such further

30

40

order and judgment as may be rendered in this cause, I do hereby order and enjoin the said corporation Respondents, and the said Respondents, the Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, John L. Morris, Esquire, Reverend John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire, and each of them, forthwith to suspend any and all acts and proceedings in their several capacities, respectively, in respect of the payment of all sums of money, and of the administration of the funds under the control of the said corporation, Respondents, and in respect of all other matters in dispute in this cause, under pain of all penalties provided by law.

(Signed) L. A. JETTÉ, J.

RECORD.

In the
Superior
Court.

No. 2.
Summary of
Proceedings.
—continued.

The 31st January, 1879.

Four original of writ and petitions are filed with certificate of service and order of the Judge written at the end of each petition.

The 31st January, 1879.

John L. Morris appears for the Respondent, with reservation of all legal objections.

D. E. Bowie appears for Respondent, Sir Hugh Allan, with reservation of all legal objections.

D. E. Bowie appears for Respondent, the Reverend Gavin Lang, with reservation of all legal objections.

The 1st February, 1879.

The parties consent that appearance of J. L. Morris do not apply to Reverend Gavin Lang and Sir Hugh Allan, and withdrawal of appearance to that extent.

The 3rd February, 1879.

Present :

The Honorable Mr. Justice Jetté.

The Respondents move that Petitioner be held to enter security for costs, for the causes set forth in said motion.

The parties being heard on said motion.

C. A. V.

The 5th February, 1879.

The Respondents file petition praying that said petitioner, the Reverend Robert Dobie, may be ordered to increase his said security to the sum of (\$159,700.00) one hundred and fifty-nine thousand seven hundred dollars, within five days or such other day as may be fixed, and that in default of such increased security being put in to the satisfaction of the said Court, or of a Judge thereof, within such delay, that the said injunction and order may be dissolved and annulled, and the said petition in so far as it asks for an injunction be hence dismissed with *costs distracts* to John L. Morris, attorney for Respondents, for the reasons set forth in said petition.

RECORD. The affidavit of William Darling and James Croil, are filed in support of said petition.

In the
Superior
Court.

This case is continued till the thirteenth instant to answer.

The 12th February, 1879.

The Reverend Robert Dobie files answer to petition of Respondents.

No. 2.
Summary of
Proceedings.
—continued.

The 14th February, 1879.

The petitioner, Reverend Robert Dobie, consents to reinvestment in other stocks or securities from time to time, under order of Court, without prejudice to the writ of injunction and of this suit.

The affidavit of James Croil is filed on part of Respondents; the affidavits of Alex. McGibbon and of Rev. Gavin Lang are also filed.

Le 19 Février 1879,

Présent :

L'honorable Juge Jetté.

Le jugement sur la motion des Répondants du trois de février dernier se lit comme suit :

La Cour ayant entendu les parties par leurs Avocats sur la motion des Répondants faite et produite le trois de février courant, aux fins de contraindre le Demandeur à fournir cautionnement pour frais, ayant examiné la procédure et délibéré.

Considérant que le cautionnement requis par la section 4 de l'acte 41 Victoria, chap. 14, de la part de celui qui obtient l'émission d'un bref d'injonction n'est destiné à couvrir et ne couvre que les dommages et les frais pouvant résulter de l'émission de ce bref, mais nullement les frais qui peuvent résulter de la demande même dont ce bref n'est que l'accessoire.

Considérant que le Demandeur n'est pas résidant dans la Province de Québec, et que par suite, il est tenu de fournir le cautionnement pourvu par l'article 29 du Code Civil; accorde la dite motion et en conséquence ordonne au dit Demandeur de fournir sous dix jours de la date des présentes, un cautionnement pour les frais à être encourus dans la présente instance, sinon, et ce délai expiré, la demande du Demandeur sera tenue et considérée comme non avenue et déboutée; le tout avec dépens distracts à Mr. John L. Morris, avocat et procureur *ad litem* des Répondants.

Le jugement sur la requête des Répondants du cinq Février courant demandant un cautionnement additionnel se lit comme suit.

Présent :

Mr. le Juge Jetté.

La Cour, après avoir entendu les parties par leurs avocats respectifs, sur la requête des Répondants, produite le cinq Février courant, aux fins que le Requé- rant le Révérend Robert Dobie soit tenu de fournir et donner pour la garantie des Défendeurs, les dits Répondants, un cautionnement additionnel à celui par lui déjà donné dans cette instance, et de la réponse à icelle requête du cinq Février par le Demandeur, Requé- rant, avoir examiné la procédure et délibéré;

Considérant que le cautionnement requis par la section 41^{ème} de l'acte 41 Viet : chap. 14 est d'une nature complètement différente du cautionnement *Judicatum solvi*, et que la demande de celui-ci n'implique aucunement renonciation au droit de la partie quant à l'autre ;

Considérant qu'après le retour du bref d'injonction, la partie Défenderesse peut demander l'augmentation du cautionnement donné préalablement ; qu'aucun délai n'est fixé pour faire cette demande et que dans l'espèce elle a été faite avec diligence et en temps utile ;

Considérant que ce cautionnement n'est destiné qu'à couvrir le montant des 10 dommages probables et devant résulter immédiatement et directement du fait de l'émission du bref d'injonction lorsqu'il y a lieu à tels dommages ;

Considérant que la demande faite en cette cause par les Défendeurs, pour que le cautionnement fourni par le Demandeur soit augmenté est mal fondée quant à ce qui regarde la perte possible alléguée quant aux actions de banque possédées par les Défendeurs, ces dommages n'étant ni probables ni prochains ;

Considérant que les dommages allégués au sujet des frais que les Défendeurs sont exposés à encourir dans le cas où ils seraient poursuivis par les ministres ayant droit aux revenus du fonds par eux administrés, sont aussi des dommages éloignés et problématiques ;

20 Considérant que quant aux bons de la cité de Montréal, maintenant échus et dont l'intérêt cesse au premier Mai prochain, le Demandeur a offert de consentir à ce que les Défendeurs, sous le contrôle du tribunal, fassent le placement de la somme garantie par ces bons et de toute somme en provenant, sans préjudice à ses droits, et que le Demandeur a demandé acte de cette déclaration ;

Considérant que ce placement à être ainsi fait équivaut au cautionnement qui pourrait être fourni par le Demandeur et y supplée entièrement ;

Considérant, quant à la perte probable d'intérêt annuel sur le revenu produit par la balance des bons de la cité de Montréal possédés par les Défendeurs, et sur le revenu des bons du havre de Montréal, aussi possédés par les dits 30 fendeurs, que la dite demande est, quant à ce, juste et légale en principe ;

Donne acte au Demandeur de la déclaration par lui faite qu'il est prêt à consentir au placement de la somme représentant les bons échus de la cité de Montréal, et de toute somme produite par icelle, et, en conséquence, renvoie, quant à présent, la demande des Défendeurs pour augmentation du cautionnement pour ce motif ;

Et adjugeant sur les autres points de la demande des Défendeurs, et prenant en considération l'importance des intérêts en litige : ordonne que le Demandeur sera tenu, sous dix jours de la date des présentes, de donner et fournir, pour la garantie des Défendeurs, aux termes de la section 41^{ème} du dit Acte 41 Viet : 40 ch. 14, un cautionnement additionnel à celui par lui déjà donné s'élevant, le dit nouveau cautionnement, à trois mille cinq cents piastres, à la satisfaction de cette Cour ou d'un juge d'icelle, et à défaut par le dit Demandeur de ce faire dans le dit délai, le dit bref d'injonction sera tenu et considéré comme non avenu ;

Et la Cour, renvoyant la dite demande des Défendeurs pour le surplus, condamne le dit Demandeur aux dépens de la dite requête, distraits à Mr. John L. Morris, avocat et procureur *ad litem* des Défendeurs Requérants.

RECORD.

In the
Superior
Court.No. 2.
Summary of
Proceedings.
—continued.

RECORD.

The 28th February, 1879.

*In the
Superior
Court.*

No. 2.
Summary of
Proceedings.
—continued.

The Petitioner gives notice to Respondents, excepting the Reverend Gavin Lang and Sir Hugh Allan, under reserve of his rights, that over and above the security by him already given he will give additional security to the extent of three thousand five hundred dollars, according to the order aforesaid, said security to be given the twenty-eighth day of February instant, at half past ten of the clock in the forenoon, and that the names of the persons who will be then and there offered to give security are Joseph Hickson, railway manager, and James S. Hunter, notary, both of the city and district of Montreal.

The Petitioner gives notice to Respondents, excepting the Reverend Gavin Lang and Sir Hugh Allan, under reserve of his rights that, in accordance with the judgment herein rendered on the nineteenth of February instant, he will give security for the costs that may be incurred by the said Respondents by reason of the action of him, said Petitioner, apart from the costs and damages that may be incurred by the issuing of the writ of injunction herein before the Prothonotary of the Superior Court at the Court House in the city of Montreal, on Friday the twenty-eighth day of February instant, at half past ten o'clock in the forenoon, and that the names of the persons who will then and there be offered as such sureties are George Graham, merchant, and William Currie, both of the city and district of Montreal, who will then and there justify to 20 their sufficiency if required.

The said Petitioner gives notice that security for costs has been given—he gives also notice that additional security has been put in by him.

Proceedings on petition by Respondents for an order to suspend injunction with judgment thereon.

The 3rd March, 1879.

The Petitioners file petition to have injunction dissolved or suspended for the reasons set forth in said petition.

The affidavits of Reverend J. H. Mackerras, James S. Mullan, John Cook, John Jenkins and Robert Campbell are annexed to said petition. 30

Ten days are allowed to answer.

The 14th March, 1879.

The Petitioner files answer to petition to quash injunction, with also affidavits of Douglass Brymner, Reverend Robert Dobie, Reverend Robert Burnet, Reverend Thomas McPherson and John Davidson, of the Reverend Gavin Lang, Sir Hugh Allan and of Mr. Justice Miller.

The nineteenth of March is fixed for hearing on merits of injunction.

The 21st March, 1879.

The Petitioner files in support of case generally and of his answer to petition to dissolve a list and Exhibits BBB. LL. MM. CC. EE. KK. FF. DD. 40

The 25th March, 1879.

The affidavits of the Reverend Robert Campbell and James Croil are filed.

The 1st April, 1879.

By Mr. Justice Jetté.

This case is fixed for hearing before me in number One Division of this Court, on Saturday the fifth day of April instant, on the petition of the thirty-first December last, to dissolve or suspend the injunction at 11 o'clock in the forenoon.

The 4th April, 1879.

The affidavit of the Reverend John Jenkins is filed.

The 5th April, 1879.

Present :

The Honorable Mr. Justice Jetté

The Petitioner files exception to three affidavits filed by Respondents.

The parties being heard upon petition to dissolve and suspend injunction.

C. A. V.

Le 31 mai 1879.

Présent :

L'honorable Juge Jetté.

La Cour ayant entendu les parties sur le mérite de la Requête faite et produite par les Défendeurs, le trois de mars dernier, suppliant pour les causes et 20 raisons y énoncées, à ce que le Bref d'Injonction émis dans cette instance soit cassé ou suspendu ; ayant examiné la procédure et délibéré ;

Considérant que bien que l'acte de la Législature de Québec, 38 Victoria, chap. 64, établisse en faveur des Défendeurs en cette cause une présomption qui ne peut être détruite que par la reconnaissance juridique de l'inconstitutionnalité du dit acte, il résulte néanmoins des circonstances de la cause, des faits établis par les affidavits et consignés dans les plaidoiries écrites des dites parties, que le Re- 30 quérant a un droit incontestable à la surveillance de l'administration du fonds dont la gestion est confiée à la corporation Défenderesse et aux Défendeurs, et que le dit Requérant a de plus un intérêt réel et reconnu à la conservation du dit fonds.

Considérant qu'il est établi et reconnu que depuis la passation du dit acte, 38 Vict., chap. 64, la corporation Défenderesse a diminué le capital du dit fonds confié à son administration d'une somme de quarante mille piastres, et que le Re- quérant, en présence de ce fait est bien fondé à prétendre que la continuation de l'administration du dit fonds par la corporation Défenderesse et par les Défendeurs met ses intérêts dans le dit fonds en un danger sérieux et imminent.

Considérant que la suspension du Bref d'Injonction émis en cette cause pour- 40 rait faire encourir au Requérant par une nouvelle diminution du capital du dit fonds, une perte irréparable, tandis que le maintien du dit Bref, tout en étant un inconvénient sérieux pour les Défendeurs, ne met en péril aucun intérêt, mais au contraire protège tous les droits jusqu'à adjudication finale sur le litige entre les parties, renvoie la dite requête avec dépens distraits à Messieurs Macmaster, Hall et Greenshields, Avocats et Procureurs du Requérant, le Révérend Robert Dobie.

RECORD.

In the
Superior
Court.

No. 2.

Summary of
Proceedings.
—continued.

RECORD. CONTINUATION OF PROCEEDINGS ON PRINCIPAL DEMAND.

*In the
Superior
Court.*

The 8th March, 1879.

The Petitioner files demand of plea to his action.

The 11th March, 1879.

No. 2.
Summary of
Proceedings.
—continued.

The Respondents, the "Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," the Reverend Daniel M. Gordon, the Reverend John Cook, the Reverend John Jenkins, John L. Morris, Robt. Dennistoun, William Walker, the Reverend John H. Mackerras, Wm. Darling, Alexander Mitchell, file pleas.

The Respondent, the Reverend Gavin Lang, minister of St. Andrews Church, 10 Montreal, declares—that he acquiesces in the pretensions of the Petitioner; that further it is in the interest of the lawful claimants of Funds, heretofore administered by the said Corporation, that the injunction herein made should be continued; that in all matters this Respondent has acted in good faith, and he abides the order and judgment of the Court herein.

The same declaration is made by Sir Hugh Allan.

The 21st March, 1879.

The Petitioner files, in support of case generally and of his answer to petition to dissolve, a List and Exhibits BBB. LL. MM. CC. EE. KK. FF. DD.

The 2nd June, 1879.

The Respondents, except Reverend G. Lang and Sir Hugh Allan, give notice to Petitioner that the Honorable Mr. Justice Jetté, one of the judges of said Court, in chambers, has this day appointed and fixed Tuesday the tenth day of June, instant, at eleven of the clock in the forenoon, before a judge in chambers in the Court House, Montreal, for the adduction of the Petitioner's evidence in this cause.

The said order is as follows:

I, the undersigned Judge, do hereby appoint and fix Tuesday the tenth day of June, instant, at eleven o'clock in the forenoon in the Court House, Montreal, for the adduction of the Petitioner's evidence in this cause, notice thereof to be given to the Petitioner. Enquête to be before a judge in chambers. Inscription filed.

(signed) L. A. JETTÉ, J.

The 9th June, 1879.

The Respondents, except the Reverend Gavin Lang and Sir Hugh Allan, file petition praying that they may be permitted to deposit in the office of the Prothonotary of this Court, or in such place as ordered by the Honorable Judge, the sum of eight thousand dollars (\$8000.00) or such other sum as the said Honorable Judge may fix, to secure the rights of petitioner, Dobie, pending this suit, and that the injunction granted in this cause may be declared dissolved so soon as said sum, in such securities as prescribed by His Honor, be deposited in the office of the said Prothonotary, costs to abide the issue of the suit.

They give notice of said petition to the petitioner, Dobie.

The 10th June, 1879.

The Enquête is continued to the seventeenth instant by consent.

The 14th June, 1879.

The petition of the ninth instant is rejected, with costs by his Honor, Mr. Justice Jetté.

The Respondents except to judgment rendered this day by the Honorable Mr. Justice Jetté, on petition.

The 18th June, 1879.

The Petitioner files answer to pleas.

10 The Respondents file answer to Petitioner's answer to Respondents plea.

The 25th June, 1879.

S. A. Abbott is sworn as stenographer to take evidence.

Reverend Gavin Lang, a witness for Petitioner, is sworn and examined.

The 27th June, 1879.

The Respondents file admissions with a List and two Exhibits 3¹ and 3².

The 28th June, 1879.

Reverend John McDonald, a witness for Petitioner, is sworn and examined.

The 30th June, 1879.

20 The Respondents give notice to Petitioner to proceed with his enquête the second day of July next.

The 2nd July, 1879.

Douglas Brymner, Reverend Gavin Lang, Sir Hugh Allan and James Croil, witnesses for Petitioner, are sworn and examined.

Harry Cutt is sworn as stenographer.

James S. Mullan, a witness for Respondents with the exception of Sir Hugh Allan and Reverend Gavin Lang, is sworn and examined.

The 7th July, 1879.

John Hugh Mackerras, a witness for Respondents, is sworn and examined.

The 9th July, 1879.

30 Reverend John Jenkins, a witness for Respondents, is sworn and examined.

The 15th July, 1879.

Reverend Robert Campbell and Reverend G. Lang, witnesses for Respondents, are sworn and examined.

The 1st August, 1879.

The Petitioners file a List and Exhibits PP. X. Z1. Z2. Z3. Z4. Z5 and Z6.

The 27th August, 1879.

The Petitioner inscribes this cause upon the *Rôle de droit* for hearing on the merits on the twenty-ninth day of August instant, and gives notice of same.

The 1st September, 1879.

Present :

40 The Honorable Mr. Justice Jetté.

The parties being heard upon the merits of this cause.

RECORD.

In the
Superior
Court.

No. 2.
Summary of
Proceedings.
—continued.

C. A. V.

RECORD.

Le 29 décembre, 1879.

Présent en Chambre :—L'honorable Juge Jetté.

*In the
Superior
Court.*

No. 2A.
Judgment of
the Superior
Court, dated
29th Decem-
ber 1879.

Ayant entendu les parties par leurs avocats respectivement sur le mérite de cette cause, examiné la procéure, les pièces produites et la preuve, vu les admissions produites par les parties et délibéré ;

Considérant que le Requéant allègue par sa demande que la corporation Défendresse a été créée sous le nom de "Le Bureau d'Administration des Biens Temporels de l'Eglise Presbytérienne du Canada en rapport avec l'Eglise d'Ecosse," pour la possession et l'administration d'un certain fonds appartenant à la dite Eglise, et préalablement créé par résolution du Synod de la dite Eglise, en date du mois de janvier mil huit cent cinquante-cinq, et que par le statut créant et incorporant le dit bureau, il a été entre autres choses pourvu et garanti que la propriété du dit fonds appartiendrait exclusivement à la dite Eglise, que le revenu du dit fonds serait affecté aux diverses charges annuelles établies sur icelui, lors de sa création, en faveur des ministres de la dite Eglise, et qu'enfin les membres du dit bureau devraient toujours être des ministres ou des membres de la dite Eglise en pleine communion avec elle, et que quatre d'entre eux sortiraient de charge et seraient remplacés chaque année ;

Considérant que le Requéant allègue en outre que lors de la création du dit fonds, il était un des titulaires ayant droit à une charge ou allocation annuelle de quatre cent cinquante piastres à prendre sur le revenu du dit fonds ; qu'il a été alors convenu, stipulé et admis comme principe fondamental de la création du dit fonds que pour avoir droit à aucun revenu provenant d'icelui il faut être ministre de la dite Eglise ; et que le Requéant est encore aujourd'hui en pleine possession de ses droits et privilèges sous ce rapport, étant resté ministre de la dite Eglise et en pleine communion avec elle ;

Considérant que le Requéant allègue de plus que par un Acte de la Législature de la Province de Québec passé en mil huit cent soixante-et-quinze, et étant le 38 Victoria, chapitre 64, les conditions d'administration du dit fonds ont été changées de manière à continuer en charge les membres du dit bureau pour le temps d'alors, et à ne pourvoir à leur remplacement qu'au cas de vacance par décès, résignation ou absence, et par des personnes autres que des membres de la dite Eglise Presbytérienne du Canada en rapport avec l'Eglise d'Ecosse, et que le dit Acte permet de plus au dit bureau de prendre sur le capital du dit fonds, mais que ce dit Statut Provincial est inconstitutionnel et excède la compétence de la dite Législature de la Province de Québec ;

Considérant que le Requéant allègue en outre que les membres actuels du dit bureau sont illégalement restés en charge comme tels, en vertu de cet Acte inconstitutionnel sus-mentionné qu'ils n'ont aucun droit d'occuper la dite charge, et qu'ils ont de plus agi illégalement en payant diverses sommes à des ministres ne formant plus partie de la dite Eglise, et qu'il demande en conséquence que le dit Statut Provincial, 38 Victoria, chapitre 64, soit déclaré inconstitutionnel, nul, et de nul effet ; que les Défendeurs soient déclarés non-légalement élus membres du dit bureau, et qu'il leur soit enjoint de cesser d'occuper la dite charge et d'administrer les dits biens, et qu'enfin il soit déclaré que le dit fonds des biens temporels est la propriété exclusive de la dite Eglise, et ne peut être employé qu'aux

finis en premier lieu pourvues, et de plus que les Révérends John Cook, James C. Muir, George Bell, John Fairlie, David W. Morrison et Charles A. Tanner soient déclarés n'être plus ministres de la dite Eglise et n'avoir aucun droit au revenu du dit fonds;

Considérant que les Défendeurs, sauf le Révérend Gavin Lang et Sir Hugh Allan, ont contesté cette demande, affirmant entre autres choses la constitutionnalité du statut attaqué par le Requérant et la légalité de leurs actes;

Considérant que par la section 92 de l'Acte de l'Amérique Britannique du Nord, 1867, il est déclaré que la propriété et les droits civils sont exclusivement du ressort et de la compétence des Législatures Provinciales et que les droits affectés par le dit Acte 38 Victoria, chapitre 64, dont le Requérant demande l'annulation, tombent formellement sous l'empire de la dite section 92 de l'Acte constitutionnel, et sont par suite, sous la juridiction et compétence de la Législature Provinciale, et qu'en conséquence le dit Statut Provincial est valable et légal et a pleine force et vigueur;

Considérant que bien que le Requérant ne soit pas résidant dans la Province de Québec, la Législation du Parlement de cette Province affecte nécessairement les droits qu'il peut posséder ou réclamer dans la dite Province, et que par suite les droits qu'il invoque dans l'espèce sont nécessairement soumis aux dispositions du dit Acte Provincial, 38 Victoria, chapitre 64;

Considérant qu'aux termes du dit Acte les Défendeurs sont légalement en charge comme membres de la corporation Défenderesse et qu'ils ont droit de continuer l'administration des biens qui leur sont confiés comme tels;

Considérant que tant en vertu du dit Acte, 38 Victoria, chapitre 64, qu'en vertu d'un autre Acte du dit Parlement de la Province de Québec, savoir, le Statut 38 Victoria, chapitre 62, dont la légalité et la constitutionnalité n'ont pas été mises en question, le dit fonds sus-mentionné est resté soumis en faveur de tous les titulaires y ayant droit, lors de la création d'icelui, à toutes les charges constituées sur icelui, et que par suite, le droit du Requérant à son revenu annuel de quatre cent cinquante piastres a été complètement sauvegardé et garanti;

Considérant néanmoins que par les dits deux statuts en dernier lieu mentionnés la propriété du dit Fonds n'est plus attribuée exclusivement à la dite Eglise Presbytérienne du Canada en rapport avec l'Eglise d'Ecosse, mais qu'après l'extinction de tous droits antérieurs garantis par le dit fonds, elle est transférée à l'Eglise Presbytérienne en Canada, formée de la dite Eglise Presbytérienne du Canada en rapport avec l'Eglise d'Ecosse et de trois autres Eglises dont l'union a été autorisée par le dit Statut 38 Victoria, chapitre 62, et qu'en vertu des dispositions des dits statuts les dits Révérends John Cook, James C. Muir, George Bell, John Fairlie, David W. Morrison et Charles A. Tanner étaient en droit de recevoir et les Défendeurs étaient en droit de leur payer les sommes par eux reçues, sur et à même le revenu du dit fonds administré par les Défendeurs;

Considérant, en, conséquence, que la demande du Requérant est mal fondée et ne peut être maintenue, et que les Défendeurs (excepté le Révérend Gavin Lang et Sir Hugh Allan) sont bien fondés en leurs défenses;

Maintenons les défenses des dits Défendeurs (sauf l'exception susdite) et renvoyons en conséquence la demande du dit Requérant, et cassons et annulons à

RECORD.

In the
Superior
Court.

No. 2A.

Judgment of
the Superior
Court, dated
29th Decem-
ber 1879—
continued.

RECORD. toutes fins que de droit le bref d'injonction émis en cette cause, et en donnons main levée aux dits Défendeurs, avec dépens distraits à J. L. Morris, écuyer, leur avocat.

In the
Superior
Court.

Transcript.

No. 2A.

Judgment of
the Superior
Court, dated
29th Decem-
ber 1879—
continued.

Montréal, le 19 Janvier, 1880.

GEO. H. KERNICK,
Depy. P. S. C.

Schedule No. 1.

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878.

Superior Court
for Lower Canada, }

Victoria, by the Grace of God, of the United Kingdom of
Great Britain and Ireland, Queen, Defender of the
Faith :

10

To any of the Bailiffs of the said Court appointed for the said
district of Montreal, Greeting :

No. 2100. } WE COMMAND you, to summon, within the limits of the district of
Montreal, "Board for the Management of the Temporalities Fund of
the Presbyterian Church of Canada in connection with the Church of Scotland,"
a body politic and corporate, duly incorporated and having an office and its principal
place of business in the city of Montreal, and the Reverend Daniel M. Gordon,
Bachelor of Divinity, minister of St. Andrew's Church of Ottawa, Province
of Ontario, Reverend John Cook, Doctor of Divinity, minister of St. Andrew's
Church of Quebec, Province of Quebec; Reverend John Jenkins, Doctor of
Divinity, minister of St. Paul's Church of Montreal, Province of Quebec; Reverend
Gavin Lang, minister of St. Andrew's Church of Montreal, Province of
Quebec; Sir Hugh Allan of Ravenscraig, Montreal, Province of Quebec; John L.
Morris, Esquire, advocate of Montreal, Province of Quebec; Robert Dennistoun,
Esquire, County Judge of Peterborough, Province of Ontario; and William
Walker, Esquire, merchant of Quebec, Province of Quebec; the Reverend John
H. McKernan of Kingston, in the Province of Ontario; William Darling, Esquire,
and Alexander Mitchell, both merchants of the city of Montreal aforesaid,
Respondents, to be and appear before any one of the Honorable Judges of our
said Superior Court for Lower Canada, in chambers in the Court House, 30
in the city of Montreal, in the said district of Montreal, on Friday the
thirty-first day of January next, at the hour of half-past ten of the clock in the
forenoon, to answer the Reverend Robert Dobie of Milton, in the county of Hal-
ton, and Province of Ontario, minister, Petitioner of the *demande* contained in
the annexed *Requete libellée*, and have you then and there this writ, and the
said Respondents and each of them are enjoined to appear as aforesaid; and the
said Respondents and each of them are enjoined to suspend all acts, proceedings
and operations in respect to the payment of all or any sums of money and of the
administration of the funds under the control of the said corporation Respond-
ents, and in respect of all other matters in dispute in this cause, under pain of all 40
legal penalties provided by law.

In witness whereof, we have caused the seal of our said Court to be here-

unto affixed, at Montreal, this thirty-first day of December, in the year of Our Lord one thousand eight hundred and seventy-eight, and in the forty-second year of Our reign.

HUBERT, HONEY & GENDRON,
Prothonotary of the said Court.

(On the back.)

Issued upon the affidavit of Douglas Brymner, the Reverend Gavin Lang, and the Reverend William Simpson, and the order of the Honorable Louis A. Jetté, Judge of the said Superior Court, upon the petition of the within named the Reverend Robert Dobie, the thirty-first day of December, one thousand eight hundred and seventy-eight.

Montreal, 31st December, 1878.

HUBERT, HONEY & GENDRON,
P.S.C.

RECORD.
In the
Superior
Court.

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
continued.

Annexed to the writ is the following petition :

Canada,
Province of Quebec, } In the Superior Court.
District of Montreal.

The Reverend Robert Dobie - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of
the Presbyterian Church of Canada in connection with
the Church of Scotland," et al - - - - - Respondents.

To the Honorable the Superior Court of Lower Canada, District of Montreal, or to any one of the Honorable Justices of the said Court sitting in and for the District of Montreal.

The humble Petition of the Reverend Robert Dobie, of Milton, in the county of Halton, in the Province of Ontario, and Dominion of Canada, Minister; personally, and in his qualities hereinafter mentioned, Petitioner, complains of the
" Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," a body politic and corporate, duly incorporated, and having an office and its principal place of business in the city of Montreal, and of the Reverend Daniel M. Gordon, Bachelor of Divinity, minister of St. Andrew's Church of Ottawa, Province of Ontario; Reverend John Cook, Doctor of Divinity, minister of St. Andrew's Church, of Quebec, Province of Quebec; Reverend John Jenkins, Doctor of Divinity, minister of St. Paul's Church, of Montreal, Province of Quebec; Reverend Gavin Lang, minister of St. Andrew's Church, of Montreal, Province of Quebec; Sir Hugh Allan, of Ravensaraig, Montreal, Province of Quebec; John L. Morris, Esquire, advocate, of Montreal, Province of Quebec; Robert Dennistoun, Esquire, County Judge of Peterborough, Province of Ontario; William Walker, Esquire, merchant, of Quebec, Province of Quebec; the Reverend John H. Mackerras, of Kingston, in the Province of Ontario; William Darling, Esquire, and Alexander

RECORD. Mitchell, both merchants of the city of Montreal, aforesaid, Respondents; and avers:

*In the
Superior
Court.*

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
continued.

That Petitioner is a minister of the Presbyterian Church of Canada in connection with the Church of Scotland, and a member of the Synod thereof, and minister of the church and congregation designated "St. Andrew's Church" in Milton, aforesaid, in connection with and under the ecclesiastical jurisdiction of the Presbyterian Church of Canada in connection with the Church of Scotland.

That said Petitioner is a member and minister of the Church of Scotland, and a Protestant clergyman.

That the said Respondents, the "Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," is a body politic and corporate, duly incorporated under a Statute of the heretofore Province of Canada, 22 Vic. chap. 66; having an office and its principal place of business in the city of Montreal, in the district of Montreal, in the Province of Quebec.

That in the year eighteen hundred and fifty, Petitioner was duly licensed as a probationer and minister of the Church of Scotland by law established in that part of the United Kingdom of Great Britain and Ireland, called Scotland, and Petitioner came to the heretofore Province of Lower Canada, now the Province of Quebec, as an ordained missionary of the said Church of Scotland, in the year eighteen hundred and fifty-two, and thereupon commenced and continued to labor and preach and teach as a missionary and minister of said last mentioned Church continuously in the said city of Montreal, until the year eighteen hundred and fifty-three.

That subsequently, on or about the seventh day of October, eighteen hundred and fifty-three, Petitioner, as a minister and missionary of the said Church of Scotland, removed from the said city of Montreal, and was admitted to and became a member of the Presbytery of Glengarry, in the now Province of Ontario, which said Presbytery was then and still is under the ecclesiastical jurisdiction of the Presbyterian Church of Canada in connection with the Church of Scotland, 30 and of the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland, and the said Petitioner thereupon became a member and a minister of the said Presbyterian Church of Canada in connection with the Church of Scotland, and as such was duly appointed as minister and incumbent to the charge and pastorate of the church and congregation in connection therewith, designated the church and congregation of Osnabruck, situated in the township of Osnabruck, in the county of Stormont, in the now Province of Ontario, then the section of the Province of Canada known and designated as Upper Canada, and also Canada West.

That since last mentioned date, Petitioner has continued to be and to act as a minister of the said Presbyterian Church of Canada in connection with the Church of Scotland, within the heretofore Province of Canada and within the Dominion of Canada, and has been at all times, and is now, as such in good standing in the said church and in the Synod thereof.

That the Petitioner, as a member and minister of the Church of Scotland, and as a member and minister of the Presbyterian Church of Canada in connection with the Church of Scotland, and as a member of the Synod of the said last

mentioned church, and as a Protestant clergyman, since the date of the Petitioner's induction into the ministry as aforesaid, continuously unto the present time, became and was entitled to a share of and to a right of ownership in and to participate in the proceeds of certain lands of the Crown within the Provinces of Upper and Lower Canada respectively, and in the rents, profits and emoluments derivable therefrom, as in the Acts and Enactments relating thereto declared.

That by Acts of the Imperial Parliament of Great Britain and of the Imperial Parliament of the United Kingdom of Great Britain and Ireland, the Sovereigns of Great Britain and of the United Kingdom of Great Britain and Ireland, were empowered to authorise the Governor or Lieutenant-Governor of each of the then Provinces of Upper and Lower Canada respectively, to make from out of the lands of the Crown within said Provinces respectively, such allotment and appropriation of lands as therein mentioned, for the support and maintenance of the Protestant clergy within the said Provinces, and to apply the rents, profits and emoluments which might at any time arise from such lands, so allotted and appropriated, solely for the maintenance and support of a Protestant clergy within the Province in which the same might be situated and to no other purpose whatever.

That subsequently thereto, in pursuance of said Acts, certain lands of the Crown were from time to time reserved for the purposes mentioned therein, which said lands were known, and were and are commonly designated by the name of the "Clergy Reserves."

That the Governor, Lieutenant-Governor, and Administrator of the heretofore Provinces of Upper and Lower Canada respectively, were empowered with the consent of the Executive Council of such Provinces respectively, and in pursuance of His Majesty's instructions, to sell and convey a part of the said "Clergy Reserves" in each of the said Provinces, and to invest the proceeds of such sales in the Public Funds of the said United Kingdom, and to appropriate the dividends and interests of the moneys so invested for the support and maintenance of a Protestant clergy within the said Provinces, solely and to no other purpose whatever.

That by another Imperial Act, the sale of the entire Clergy Reserves in the Province of Canada and the investment of the proceeds of such sale, and the distribution of the interests and dividends of such investment, subject to certain conditions, were authorized for the purposes hereinbefore mentioned.

That by another Imperial Act, the Legislature of the heretofore Province of Canada was authorised to dispose of the said Clergy Reserves and to make such investments of the proceeds thereof as to the said Legislature might seem meet, subject to the proviso, that it should not be lawful for the said Legislature of the Province of Canada, by any Act or Acts thereof as aforesaid, to annul, suspend or reduce any of the annual stipends which had, previously thereto, been already assigned and given to the clergy of the churches of England and Scotland, or to any other religious bodies or denominations of Christians in Canada (to which the faith of the Crown was pledged) during the lives or incumbencies of the parties then receiving the same, or to appropriate or apply to any other purpose, any part of the said proceeds, investments, interests, dividends, rents and profits that

RECORD.

*In the
Superior
Court.*

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
—continued.

RECORD.

*In the
Superior
Court.*

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
continued.

might be required for the payment of the stipends and allowances due or accruing to the ministers and missionaries of the said churches of England and Scotland during their lives or incumbencies.

That the Imperial Acts, to wit, the Acts of the Parliament of Great Britain and of the United Kingdom of Great Britain and Ireland hereinbefore referred to, the whole of which are herein invoked, are specifically referred to in the Act passed by the heretofore Province of Canada, in the eighteenth year of the reign of Her Majesty Queen Victoria, entitled, 18 Victoria, cap. 2.

That under and by virtue of the said last mentioned Act, it was enacted and declared that the moneys arising from the sale and disposal of the said Clergy Reserves, in the said Province of Upper Canada, should continue to form a separate fund, which should be called the Upper Canada Municipalities' Fund, and that the moneys arising from the sale and disposal of the Clergy Reserves in the said Province of Lower Canada should continue to form a separate fund, which should be called the Lower Canada Municipalities' Fund, and that after deducting the necessary expenses attending the sales of the said Clergy Reserves, and managing the same and the said funds, the money forming the said funds, or that had previously arisen therefrom, should be paid into the hands of the Receiver-General of the heretofore Province of Canada, to be by him applied according to the purposes of the said last mentioned Act.

That by virtue of the said last mentioned Act, the annual stipend and allowance which had been, before the passing of the Act of Parliament of the United Kingdom, in the sixteenth year of Her Majesty's reign, assigned or given to the clergy of the churches of England and of Scotland, or to any other religious bodies or denominations in either section of the Province, and chargeable under the said Act of Parliament on the Clergy Reserves in such section (and to which the faith of the Crown was pledged) should, during the natural lives or incumbencies of the parties, (to wit, the ministers and missionaries of the said churches and religious denominations receiving the same at the time of the passing of the said Act, to wit, the Imperial Act 16 Vict.) be a first charge on the Municipalities' Fund for that section of the Province, and should be paid out of the same in preference to all other charges or expenses whatever.

That by the Act of the late Province of Canada (18 Vict. cap. 2) it was enacted that the Governor of the said Province of Canada might, whenever he might deem it expedient, with the consent of the parties and bodies severally interested, commute with the said parties such annual stipends or allowances for the value thereof, to be calculated at the rate of six per cent. per annum upon the probable life of each individual, and that such commutation amount should be paid accordingly out of the Municipalities' Fund, upon which such stipend or allowance was made chargeable by the said last mentioned Act.

That under and by virtue of the said last mentioned Act, each of the ministers and missionaries of the Presbyterian Church of Canada in connection with the Church of Scotland, then receiving benefits within the said Province of Canada from the said Clergy Reserves, or from the proceeds thereof, or from the Municipalities' Funds within the respective sections of the said Province of Canada, was entitled to receive a sum of money as commutation for the value of the annual stipend or allowance payable to him therefrom, and for the interest

which he had individually, and as a member of the Presbyterian Church of Canada in connection with the Church of Scotland, in the said Clergy Reserves and in the said Municipalities' Fund, arising therefrom.

That the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, was duly summoned for the purpose of taking such steps as might be necessary to enable the said Synod and the members thereof to take advantage of the commutation clauses in the said Act of the Legislature of Canada, 18 Vic. chap. 2, and the said Synod duly met and determined and decreed as set out in the minutes hereinafter cited, in the city of Montreal, on the tenth and eleventh days of January, eighteen hundred and fifty-five.

The following is a copy of the proceedings of said Synod, extracted from its official records at pages three to eight of the Proceedings of Synod for eighteen hundred and fifty-five.

ACTS AND PROCEEDINGS of the

Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, begun at Montreal the tenth day of January, and concluded the eleventh day of January, eighteen hundred and fifty-five years.

SESSION XXVI.

Diet I.

At Montreal, and within St. Andrew's Church there :
Wednesday, the tenth day of January, one thousand
eight hundred and fifty-five years.

The which day, after sermon by the Reverend Dr. Mathieson, from Psalm xlviii. 12, 13 : " Walk about Zion and go round about her, tell the tower :
" thereof : mark ye well her bulwarks, consider her palaces, that ye may tell it
" to the generation following," the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, met *pro re nata*, and was constituted with prayer by the Moderator, the Reverend James Williamson, A.M. ; Sederunt :
Mr. James Williamson, Moderator ; Mr. John McMurchy, Mr. John Barclay, Dr. Alexander Mathieson, Mr. James Anderson, Mr. James C. Muir, Dr. John Cook, Mr. William Simpson, Mr. Alexander Wallace, Dr. Robert McGill, Mr. James T. Paul, Mr. Thomas Haig, Mr. Archibald H. Milligan, Mr. John McDonald, Mr. John McKenzie, Mr. Hugh Urquhart, Mr. John McLaurin, Mr. Thomas McPherson, Mr. Eneas McLean, Mr. Donald Munro, Mr. Thomas Scott, Mr. Andrew Bell, Mr. Robert Dobie and Mr. John White, ministers ; together with Mr. Alexander Morris, Mr. John Thompson, Mr. Thomas A. Gibson, and Hon. Thomas McKay, elders.

The Moderator laid before the Synod a requisition, which had been addressed to him, calling on him to summon a meeting of the Synod ; also a copy of his circular calling the present meeting. The same were read, as follows :

Quebec, 11th Dec., 1854.

Reverend and Dear Sir,

I beg to intimate to you that it is the opinion of the Committee of Synod, appointed to watch the progress of legislation in respect of the Clergy Reserves,

RECORD.

In the
Superior
Court.

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
continued.

RECORD. that the Bill introduced by the Government, having now passed both Houses of the Legislature, it is desirable that a meeting of Synod should be called as early as possible for the purpose of taking such steps as may be necessary to take advantage of the commutation clause in said Bill, and in the name of the Committee I beg very respectfully to request that you will call such meeting at the time and place you think most convenient.

*In the
Superior
Court.*
—
No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
continued.

I am, Reverend and Dear Sir,
Your faithful servant,

JOHN COOK.

We, the undersigned, hereby concur in the necessity of calling a special 10
meeting of Synod at the earliest period the forms of the Church will admit.

ALEX. MATHIESON.
ROBERT MCGILL.

The Reverend,

The Moderator of the Synod of the Presbyterian Church
of Canada in connection with the Church of Scotland.

Kingston, 20th December, 1854.

Reverend and Dear Sir,

In compliance with a request addressed to me by the Convener and other members of the Committee appointed to watch over the progress of legislation in 20
respect to the Clergy Reserves, to call a special meeting of Synod as early as possible for the purpose of taking such steps as may be necessary to take advantage of the Commutation clause in the Act which has lately been passed by the Provincial Parliament, I have now to intimate to you that a special meeting of Synod will be held in St. Andrew's Church, Montreal, on the 10th of January, 1855, being the second Wednesday of the month, at half-past six P.M.

I am, Reverend and Dear Sir,
Yours faithfully,

JAMES WILLIAMSON, Moderator.

P. S.—It has been thought by several of my brethren, with whom I have 30
conferred on the subject, and I concur in the opinion, that in the circumstances of the case, Montreal is, on the whole, the most suitable place for the meeting of Synod on this occasion.

The Synod unanimously agreed to approve the Moderator's conduct in calling this meeting.

The Synod then called for the report of the committee appointed to watch over the interests of the Church in regard to the Clergy Reserves, which was given in and read by Dr. Cook, the Convener, stating that the Bill for the secularization of the Clergy Reserves, which had been introduced into Parliament by the Government, had been carried in both Houses, and assented to by the Governor-General:—that it contained a clause securing to all ministers settled previous to the 9th May, 1853, the date of the passage of the Imperial Act, payment of their salaries from the Clergy Reserve Fund during their lives or incumbencies, and at the same time authorizing the Government to commute the claims of incumbents, with the consent of the parties and bodies severally interested, and that the committee, for reasons which they stated, had not considered it expe- 40

dient to interfere in any way with the passing of the said Bill, but feeling assured from many considerations that it would be for the benefit of the Church to take advantage of the Commutation clause of the Act, the Committee had requested the Moderator to call a *pro re nata* meeting of Synod to take the matter into consideration, and make the necessary arrangements; and the Committee further, and at great length recommended that the Synod should agree to commutation.

The Synod approved of the conduct of the committee, and after some discussion agreed to defer the further consideration of the report until to-morrow, and instructed the aforesaid committee to draft resolutions to be then laid before the Synod for their consideration as to their action in the matter.

The Synod agreed to spend a portion of the time in the morning in devotional exercises.

The Synod then adjourned, to meet again at half-past eleven o'clock to-morrow forenoon, and was closed with prayer.

Diet II.

At Montreal, and within St. Andrew's Church there;
Thursday, the eleventh day of January, one thousand eight hundred and fifty-five years:

The which day, the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, met, according to adjournment, and was constituted with prayer.

On the call of the Moderator, the Rev. Dr. Cook conducted the devotional exercises of the Synod, in praise, reading the scriptures and prayer.

The minutes of yesterday were read and approved.

The clerk stated to the Synod, that he had received, a considerable time ago, a letter from the Inspector-General's Department of the Government, requesting him to make a return, to be laid before Parliament, of all persons connected with this Church, "who, at the date of the passing of the Act of the Imperial Parliament, to make provision concerning the Clergy Reserves of this Province, viz.: 9th May, 1853, were receiving any income or allowance from such portion of the proceeds of the Clergy Reserves as had been granted to the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, specifying the names and ages of such persons, the annual amounts of their allowance, and through whom it is paid;" and, that he had immediately issued a circular to the several parties, requesting a statement of their ages, to be returned to him,—Mr. Allan, of Montreal, having kindly offered to furnish him with some of the items;—but that he had been, as yet, unable to make the required return, in consequence of considerable number of the ministers having neglected to make returns to him, although written to a second time on the subject; and that he had also, at the suggestion of the Clergy Reserve Commissioners, written to all of the parties whose names were on the roll for salaries. The Synod, while approving of the conduct of the clerk, directed him to use all diligence in procuring as soon as possible, the whole of the required information, and in transmitting to the Government the list of incumbents up to 9th May, 1853, to furnish, at the same time, the names of those since put upon the roll as having, in the estimation of the Synod, claims upon the Fund.

RECORD.

In the
Superior
Court.

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—

—continued.

RECORD.

*In the
Superior
Court.*

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
continued.

The Committee appointed yesterday to arrange measures for the consideration of the Synod, reported certain resolutions which the Synod proceeded to discuss at length.

The Synod having heard the report of the Committee appointed by the Synod to watch over the interests of the Church in so far as these might be affected by the action of the Legislature on the Clergy Reserves, and also the verbal reports of such members of the Committee as had been in communication with members of the Government on the subject;—and having seriously and maturely considered that clause of the Clergy Reserves Act, lately passed by the Provincial Parliament at its present session, by which His Excellency the Governor in Council is authorised, with the consent of the parties interested, to commute the salaries or allowances of ministers chargeable for life or during their incumbencies on the Clergy Reserves Fund, for their value in money, 10
—Resolved,

“ 1st. That it is desirable that such commutation, if upon fair and liberal terms, should be effected; and that the Rev. Alex. Mathieson, D.D., of Montreal, the Rev. John Cook, D.D., of Quebec, Hugh Allan, Esq., of Montreal, John Thompson, Esq., of Quebec, and the Hon. Thomas Mackay, of Ottawa City, be the Synod's Commissioners, with full power to give the formal sanction of the Synod to such commutation as they shall approve, the said Commissioners being hereby instructed to use their best exertions to obtain as liberal terms as possible; the Rev. Dr. Cook to be Convener; three to be a quorum; the decision of the majority to be final, and their formal acts valid; but that such formal sanction of the Synod shall not be given except in the case of ministers who have also individually given them, the said Commissioners, power and authority to act for them in the matter to grant acquittance to the Government for their claims to salary to which the faith of the Crown is pledged; and to join all sums so obtained into one fund, which shall be held by them till the next meeting of Synod, by which all further regulations shall be made; the following, however, to be a fundamental principle which it shall not be competent for the Synod at any time to alter, unless with the consent of the ministers granting such power and authority; that the interest of the fund shall be devoted, in the first instance, to the payment of £112 10s. each, and that the next claim to be settled, if the fund shall admit, and as soon as it shall admit of it, to the £112 10s., be that of the ministers now on the Synod's Roll, and who have been put on the Synod's Roll since the 9th of May, 1853; and, also, that it shall be considered a fundamental principle that all persons who have a claim to such benefits, shall be ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and that they shall cease to have any claim on, or be entitled to any share of said commutation fund whenever they shall cease to be ministers in connection with the said Church. 20 30 40

“ 2nd. That so soon as said commutation shall have been decided upon, and agreed to by the said Commissioners, the Rev. John Cook, D.D., of Quebec, shall be fully empowered and authorised, and this Synod hereby delegate to the said Rev. Dr. John Cook full power and authority to endorse and assent to the several Powers of Attorney from the individual parties on behalf of the said Synod, and in their name, and as their act and deed, as evidencing their assent thereto.

" 3rd. That all ministers be, and they are hereby enjoined and entreated, (as to a measure by which, under Providence, not only their own present interests will be secured, but a permanent endowment for the maintenance and extension of religious ordinances in the Church) to grant such authority in the fullest manner, thankful to Almighty God that a way so easy lies open to them for conferring so important a benefit on the Church.

" 4th. That the aforesaid Commissioners be a Committee to take the necessary steps to get an Act of Incorporation for the management of the General Fund, so to be obtained; the aforesaid Commissioners to constitute the said Corporation till the next meeting of Synod, when four more members shall be added by the Synod."

The Synod ordered the minutes of this meeting to be printed, and a copy sent to each minister as soon as possible, and they further instructed their Commissioners, named above, to address a circular to the several ministers, showing them the importance of communiting upon the plan agreed to at this meeting, and giving them full information on the subject.

The Synod requested their Moderator to convey to the Hon. John Hamilton, of Kingston, and the Hon. Thomas Mackay of Ottawa, the thanks of this Synod for the assistance afforded by them to the Clergy Reserve Committee of this Synod, when lately met at Quebec, and for their exertions on behalf of the interests of this Church, especially during the present session of Parliament.

The business for which the special meeting of Synod had been called having been finished, the Reverend Dr. Mathieson stated "that he availed himself of the opportunity which this special meeting of Synod afforded, to direct the attention of the congregations within the bounds to the call made by the General Assembly of the Church of Scotland, and generously responded to by every parish in the land to contribute to the National Patriotic Fund for the relief of the wives and children of the brave men who have been disabled or found a soldier's grave in fighting for the honor of their country, and the liberty and (it is to be hoped), the ultimate peace of the world, and the advancement of the Redeemer's Kingdom; and, also, to the circumstance that several of the congregations in connection with this Synod have already contributed or were anxious to contribute their subscriptions through the channel thus afforded them, to the Patriotic Fund." Whereupon Dr. Mathieson moved to resolve, and it was resolved accordingly:

"That this Synod deeply sympathise with Her Majesty and her people in the great struggle in which she has been constrained to engage, for the liberty and independence of nations. Sympathising also with the numerous families, whose hearts, in the inscrutable Providence of God, have been filled with sorrow for the loss of their natural protectors, or their friends who have fallen in the contest, and being deeply sensible of, and grateful for, the inestimable blessings, both civil and religious, which this colony enjoys, under Her Majesty's gracious sway, and its connection with the parent State, this Synod strongly recommend to all the congregations within their bounds, not only as an expression of their gratitude and sympathy, but as a solemn duty, at the earliest convenient season, and in the way that to the ministers and elders seems best, to make contributions to the National Patriotic Fund:—and that Hew Ramsey, Esq., Montreal,

RECORD.

*In the
Superior
Court.*

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
continued.

RECORD. he appointed to receive from the respective congregations their several contributions, and transmit them to William Young, Esquire, W. S., Edinburgh, who has been appointed to receive the contributions of the Church."

*In the
Superior
Court.*

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
continued.

The Synod was then closed with prayer.

That the said proceedings of the said Synod are valid and binding; that the terms and conditions thereby established and declared, form the basis for the distribution and application of the said fund, hereinbefore and hereinafter referred to.

That the sole business submitted at the meeting of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, at the diets thereof held on the tenth and eleventh days of January, eighteen hundred and fifty-five, was the consideration of giving force and effect to the clause permitting the Governor of the then Province of Canada in Council to commute the claims of ministers, incumbents and missionaries upon the Clergy Reserves Funds, with the consent of the bodies and parties severally interested as set out in the minutes hereinbefore recited.

That the said Synod, on its own behalf and on behalf of its members, determined at its said meeting to take advantage of the said commutation clause, and appointed a Committee, styled Commissioners, to give effect to the said determination, and the said Synod ordered said minutes to be printed, and instructed said Committee to send a copy thereof to each minister entitled to commute.

That the said Reverend John Cook, Doctor of Divinity, was appointed convener and chairman of said Committee, and as such, was authorised to, and did, address a circular to all the then ministers and incumbents of the said Church entitled to benefits from the said funds, among others to the Petitioner, which circular was in the following words:—

"Quebec, 24 February, 1855.

"Rev. Sir,

"I am instructed by the Commutation Committee appointed at the last meeting of Synod, to enclose to you two Powers of Attorney, approved by the Government and by the Synod, which it is necessary you should sign and forward to Hugh Allan, Esq., Montreal, without delay,—in order to our obtaining a commutation of Clergy Reserve money, which will be advantageous to the Church. All the ministers present at the meeting of the Synod in January, agreed to commute, and the ministers of the Church of England have unanimously signed similar powers to those now forwarded to you.

"The fundamental conditions contained in the minutes of the Synod, held at Montreal, on the 11th January, 1855, which are alluded to in one of these powers, and which by the terms of the said minutes, it shall not be competent for the Synod at any time to alter, unless with the consent of the ministers granting such power and authority," are first, "That the interest of the fund shall be devoted in the first instance, to the payment of salaries of £112 10s. each," to such ministers, "and that the next claim on the fund shall be that of ministers on the roll of the Synod, and who have been put on the Synod's roll since 9th May, 1853;" and, second, "That all persons who have a claim to such benefits, shall be ministers of the Presbyterian Church of Canada in con-

"nection with the Church of Scotland, and shall cease to have any claim, when they cease to be ministers in connection with the said Church." RECORD.

"Of these conditions it is presumed you will approve, and I have the satisfaction to inform you, that on the terms proposed by the Government, and to which the Commutation Committee are prepared to agree, as soon as these powers are received from the ministers of the Church, it will be certainly possible to comply with the first condition, in so far as respects ministers settled before the 9th May, 1853, and, preserving the capital, to secure to them, from the interest, salaries of £112 10s. for life, or incumbency. And it is, therefore, earnestly entreated that there may be no hesitation or delay in signing and forwarding these powers.

"I am further instructed to call your attention to the following Resolution, passed unanimously, at the last meeting of the Synod:—

"That all ministers be, and they are hereby enjoined and entreated, (as to a measure, by which, under Providence, not only their own private interests will be secured, but permanent endowment for the maintenance and extension of religious ordinances in the Church,) to grant such authority as is necessary to effect a commutation, in the fullest manner, thankful to Almighty God, that a way so easy is open to them for conferring so important a benefit on the Church. Not doubting that you will concur in the views of the Synod,

"I am,

"Rev'd. Sir,

"Your obedient servant,

"(Signed) JOHN COOK, Convener."

"To the Reverend."—

That Petitioner and other ministers and incumbents of the said Presbyterian Church of Canada in connection with the Church of Scotland, and the missionaries of the said Church of Scotland, renounced their individual rights in the said fund and authorised the said John Cook to act for each of them and in their behalf, for and by reason of the terms and conditions of the resolutions passed at the said meeting of Synod on tenth and eleventh January, eighteen hundred and fifty-five, and more especially upon the consideration that the fund to be created thereby would be a permanent endowment for the Presbyterian Church of Canada in connection with the Church of Scotland.

That no change could be made in the distribution and application of the interest and revenues accruing on the said fund received under the said Commutation Act, and the Acts referred to therein, without the full consent and approval of each and all of the commuting ministers who renounced their individual interests therein, in consideration of the matters set out in the resolutions passed at the said meeting of Synod on the tenth and eleventh January, eighteen hundred and fifty-five.

That on and since the ninth of May, eighteen hundred and fifty-three, the Petitioner was entitled to the benefits derivable from the proceeds of the said Clergy Reserves under the said Imperial and Provincial Acts relating thereto, and on the ninth day of May, eighteen hundred and fifty-three, Petitioner was in receipt of a stipend and allowance therefrom amounting to upwards of one hundred pounds annually, and further at the date of the passing of the resolutions of

*In the
Superior
Court.*

No. 3.

Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—

—continued.

RECORD.

*In the
Superior
Court.*

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
continued.

the said Synod in favor of the said commutation, to wit, on the eleventh day of January, eighteen hundred and fifty-five, the annual value of Petitioner's stipend and allowance, forming a life claim payable to him by and out of said sums, amounted to the sum of one hundred and fifty pounds currency per annum, and the said Petitioner has never done anything to forfeit his right to participate in the said fund, or in the proceeds, profits or revenues thereof.

That during the year eighteen hundred and fifty-five, and after passing of the said resolutions by the said Synod, the said Petitioner did commute the claims due to him by the said fund, with the Government, by and through the said Commissioners, upon the conditions set out in said resolutions, and the said 10 Petitioner did thereby consent to renounce his personal rights in the said Clergy Reserves, and in the proceeds thereof in favour of the said Presbyterian Church of Canada in connection with the Church of Scotland, and did consent that the amount of the capital sum due and to accrue to him, should be joined with the amount due and to accrue to other ministers of the said Church, and that all sums thus obtained should be joined into one fund, which should be held in trust by the said Commissioners, in the said resolution named, till the meeting of the Synod next ensuing, by which all further regulations should be made, but the said renunciation of the Petitioner's rights was made subject to the fundamental principle (which it was declared not to be competent for the said Synod at any time 20 to alter, unless with the consent of the ministers granting such power and authority) namely, that the interest of the said fund to be so created, should be devoted, in the first instance, to the payment of one hundred and twelve pounds, ten shillings, to each member then on the Synod roll, and who was on the Synod roll on ninth May, eighteen hundred and fifty-three, and that the next claim to be settled, if the said fund should admit, and as soon as it should admit of it, to the one hundred and twelve pounds, ten shillings, be that of the ministers whose names at the time of the passing of the said resolutions were on the said Synod roll, and which had been put on the said Synod's roll since the ninth of May, eighteen hundred and fifty-three, up to the date of the passing of the said resolu- 30 tion; and also upon the condition that it should be considered a fundamental principle that all persons who have a claim to such benefits should be ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and that they should cease to have any claim on or to be entitled to any share of the said Commutation Fund whenever they should cease to be ministers in connection with the said Church.

That the said Petitioner has always maintained his connection with the said Presbyterian Church of Canada in connection with the Church of Scotland, and has done nothing to forfeit his rights and privileges therein.

That the funds placed in the hands of the said Commissioners, subject to 40 the terms, conditions and fundamental principles of the said resolutions, to be held for the purpose, and subject to the restrictions herein mentioned, to wit, the funds resulting from the original commutation claims of the ministers upon the Clergy Reserves, exclusive of all other contributions to it, amounted in eighteen hundred and fifty-five, to the sum of One hundred and twenty-seven thousand pounds, (£127,000) which said sum constituted, and was, and is, a Trust Fund, which could not be diverted from the purposes for which it was

originally created, and the said Commissioners and their legal successors held the same in trust for the Presbyterian Church of Canada in connection with the Church of Scotland.

That afterwards an Act of the heretofore Parliament of Canada was passed (22 Vic., cap. 66) to incorporate a Board for the management of the said fund, and for such other funds as should be contributed, subscribed or paid in, from time to time, and that it was therein declared at the time of the passing of the said Act, that said funds were held in trust by certain Commissioners on behalf of the said Church, and for the benefit of the said Presbyterian Church of Canada in connection with the Church of Scotland.

That at the time of such commutation the funds arising therefrom, and which were constituted into one fund, amounted to the sum of one hundred and twenty-seven thousand pounds, which it was declared, by a by-law passed under the provisions of the last mentioned Act, should be kept separate and distinct from any other funds which might come into the possession of the Board of Management of the Temporalities' Fund of the Presbyterian Church of Canada in connection with the Church of Scotland.

That under the provisions of the said last mentioned Act, a body corporate and politic was created under the name of the "Board for the Management of the Temporalities' Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," to wit, the corporation Respondents, which said Board it was declared, among other things, should consist of twelve members, of whom five should be ministers and seven should be laymen, all being ministers or members in full communion with the said Church, and of whom seven should be a quorum; and that the said Board should thenceforth have, hold, possess and enjoy, in trust for the said Church (meaning the said Presbyterian Church of Canada in connection with the Church of Scotland) and for the purposes in the said Act and in the preamble thereof mentioned, all moneys, debentures, bonds, bank or other stocks and securities which were then held by the Commissioners of the said Church, in trust for the said Church, under the terms of the resolutions of the tenth and eleventh of January, eighteen hundred and fifty-five, hereinbefore cited, and subject to the conditions in the said Act mentioned.

That the said last mentioned Corporation continued to manage and administer the Trust Fund arising from the original commutation, and divers other funds contributed for the purposes mentioned in the said last mentioned Act, until the fifteenth day of June, eighteen hundred and seventy-five, when the aggregate amount of the funds, assets and money under the control of the said last mentioned corporation, Respondents, and by them held in trust for the Petitioner and for all others entitled to participate in the revenues and interests accruing thereon, and for the benefit of said Church, amounting to the sum of four hundred and sixty-three thousand three hundred and seventy-one dollars and fifty-two cents, (\$463,371.52) at par value, according to statement dated first May, eighteen hundred and seventy-five, as set out in the Acts and Proceedings of the Synod of the said Church for eighteen hundred and seventy-five, at page forty-five of the Records thereof.

That an Act was passed by the Legislature of the Province of Quebec (38 Vic., chap. 64) assented to on the twenty-third February, eighteen hundred

RECORD.

*In the
Superior
Court.*

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
continued.

RECORD. and seventy-five, entitled an Act to amend the Act intituled "An Act to incorporate the Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," and providing for the administration and distribution of the funds held and administered under the Act of the late Province of Canada (22 Vic., chap. 66.)

*In the
Superior
Court.*

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
continued.

That the said Act of the Province of Quebec (38 Vic., chap. 64) relates to subject matters beyond the competency of the Local Legislature under the British North America Act, 1867, to wit, the Act of the Parliament of the United Kingdom of Great Britain and Ireland (30th and 31st Vic., chap. 3), and the Legislature of the Province of Quebec was incompetent to pass said Act; and 10 the said Act of the Province of Quebec, in so far as it derogates from, or purports to modify or vary the Act 22 Vic., chap. 66, of the heretofore Province of Canada, is null and of no effect.

That the subject matters of said Act of the Legislature of Quebec are not of a mere local or private nature within the Province of Quebec, but affect the rights of persons residing beyond the Province of Quebec, and not subject to its jurisdiction.

That the Petitioner is not subject to the legislation of the said Province of Quebec affecting his interests in the said funds, and the said Legislature of said Province of Quebec has exceeded its competency and jurisdiction in 20 passing said Act.

That the interests of the Petitioner in the moneys arising from the said commutations and in the Temporalities Fund, as constituted by the Act (22 Vic., chap. 66) of the late Province of Canada, are not of a mere local or private nature in the Province of Quebec, but are a matter of general interest.

That the objects of the corporation, Respondents, under the Act 22 Vic., chap. 66, of the heretofore Province of Canada, were not, and are not, of a provincial nature, but extend to persons residing in the Provinces of Ontario and Quebec.

That the said Act of the Legislature of the Province of Quebec is illegal and 30 unconstitutional, and beyond the competency of the said Legislature.

That the said Act of the Legislature of the Province of Quebec (38 Vic., chap. 64) is further illegal and unconstitutional, in permitting and providing for the payment of an annual stipend to ministers who have ceased to be members of, or to have any connection with the Presbyterian Church of Canada in connection with the Church of Scotland, and in providing that the Temporalities Board, to wit, the corporation, Respondents, should, if necessary, draw upon the capital fund, to wit, the Temporalities Fund, in order to provide for the payment of the stipends and salaries to ministers, as mentioned in the said last mentioned Act, and in providing that: "As often as any vacancy in the Board for the manage- 40
ment of the said Temporalities Fund occurs by death, resignation or otherwise,
the beneficiaries entitled to the benefit of the said fund may each nominate a
person, being a minister or member of the said United Church; or in the event
of there being more than one vacancy, then one person for each vacancy and
the remanent members of the said Board, shall thereupon from among the per-
sons so nominated as aforesaid, elect the person or number of persons necessary
to fill such vacancy or vacancies, selecting the person or persons who may be

“nominated by the largest number of beneficiaries to nominate as aforesaid, the
 “remanent members of the Board shall fill up the vacancy or vacancies, from
 “among the ministers or members of the said United Church,” thus depriving a
 minister who may have retained his connection with the Presbyterian Church of
 Canada in connection with the Church of Scotland, of the right to administer the
 funds under the control of the said corporation, Respondents, and disfranchising
 and disqualifying all members of the said last mentioned Church from adminis-
 tering the said fund which, of right, alone belongs to them; and further in set-
 ting aside the legal method for filling vacancies in the Board, Respondents, as
 10 prescribed by the said Act 22 Vic., chap. 66, and the By-Laws made thereunder.
 That the said Statute of the late Province of Canada (22 Vic., chap. 66) is legally
 and constitutionally in full force and effect, and the Respondents are subject to
 its provisions and the By-Laws made thereunder by the said Presbyterian
 Church of Canada in connection with the Church of Scotland, previous to the
 fourteenth day of June, eighteen hundred and seventy-five, and by those mem-
 bers, ministers and elders of the said last mentioned Church, who remained in
 connection therewith, and who have not seceded therefrom on and since the
 fifteenth day of June, eighteen hundred and seventy-five, are now in full force.

That the said Respondents have no power to apply the capital sum of one
 20 hundred and twenty-seven thousand pounds, or the sum administered by them,
 to the payment of stipends or to any other purpose whatever, but the said sum
 and such other sums as should be contributed to it were intended to remain in-
 tact as a permanent endowment for the said Presbyterian Church of Canada in
 connection with the Church of Scotland; as fully appears from the Minutes and
 the Synod letter of the Reverend John Cook, hereinbefore cited, under the ex-
 press provisions of both which the Petitioner surrendered his interests in the
 Clergy Reserves and their proceeds to the said Church.

That the said Respondents had power only to use and apply the revenues,
 interests and accruals of the said Endowment Fund, for the purposes mentioned
 30 in the said Act incorporating the Board, Respondents.

That the corporation, Respondents, since the fifteenth day of June, eighteen
 hundred and seventy-five, up to the month of December, eighteen hundred and
 seventy-seven, have drawn upon the capital of the said fund to the extent of the
 sum of forty thousand five hundred dollars and twenty-five cents (\$40,500.25)
 illegally and in contravention of the said Act (22 Vic., chap. 66) of the hereto-
 fore Province of Canada.

That the Reverend John Cook, Doctor of Divinity, of Quebec, the Reverend
 James C. Muir, Doctor of Divinity, of North Georgetown, in the Province of
 Quebec, and the Rev. George Bell, Doctor of Laws, (L.L.D.) of Walkerton, in the
 40 Province of Ontario, were commutators, and did commute their claims, upon the
 said Clergy Reserves, and upon the funds arising therefrom, concurrently with
 the Petitioner, and under and subject to the terms of the fundamental principles
 hereinbefore cited, passed by the said Synod on the eleventh day of January,
 eighteen hundred and fifty-five, but on and since the said fifteenth day of
 June, eighteen hundred and seventy-five, the said Reverend John Cook, James
 C. Muir, and George Bell, did join with another religious association called the
 Presbyterian Church in Canada, composed of persons who previous to the said

RECORD.

—
*In the
 Superior
 Court.*
 —

No. 3.
 Petition and
 Order for
 Injunction
 and Writ of
 Injunction,
 filed 31st
 December
 1878—
 —continued.

RECORD.

*In the
Superior
Court.*

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
continued.

fifteenth day of June, belonged to four separate and distinct religious organisations, and extending over various Provinces of the Dominion, under four separate and distinct ecclesiastical governments entirely unconnected with each other, to wit, the Canada Presbyterian Church, the Presbyterian Church of Canada in connection with the Church of Scotland, the Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces, several members from each of which said last mentioned religious organisations united themselves together in a new and distinct religious organisation and association called the Presbyterian Church in Canada: that the said Reverends John Cook, James C. Muir and George Bell, on said fifteenth day of 10 June, eighteen hundred and seventy-five, ceased to be ministers thenceforward of the Presbyterian Church of Canada in connection with the Church of Scotland, and Petitioner avers that said Reverends John Cook, James C. Muir and George Bell, have not been entitled to receive any benefits from the said fund, or to be paid any sums of money by the corporation, Respondents, by reason of their having seceded from, and ceased to be ministers of the said Presbyterian Church of Canada in connection with the Church of Scotland.

That since the said fifteenth day of June, eighteen hundred and seventy-five, the said corporation, Respondents, have paid to the said Reverend John Cook the sum of eleven hundred and twenty-five dollars, to the said Reverend 20 James C. Muir the sum of nine hundred dollars, to the said Reverend George Bell the sum of eleven hundred and twenty-five dollars, out of the said fund, and the interest and revenues thereof, for commutation allowances by the said corporation, Respondents, alleged to have accrued on said fund since the said fifteenth day of June, eighteen hundred and seventy-five, in favour of the said Reverends John Cook, James C. Muir and George Bell, in their quality as members of the Presbyterian Church of Canada in connection with the Church of Scotland; though since the said fifteenth day of June, eighteen hundred and seventy-five, the said Reverends John Cook, James C. Muir and George Bell, have been and are ministers of the said new organisation, styled the Presbyte- 30 rian Church in Canada.

The Petitioner has reason to believe, and verily believes, that the corporation, Respondents, will pay to the said Reverends John Cook, James C. Muir and George Bell, the sum of two hundred and twenty-five dollars each, on or before the first day of January next, as commutation allowances from the said fund, to each of the said last mentioned ministers, in their quality as ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, for the half year ending 31st of December, eighteen hundred and seventy-eight.

That preceding the fifteenth day of June, eighteen hundred and seventy-five, the Reverend John Fairlie, minister of L'Original, Province of Ontario; 40 the Reverend David W. Morison, Bachelor of Arts, minister of Ormstown, Province of Quebec, the Reverend Charles A. Tanner, of Richmond, Province of Quebec, amongst others, not being of the number of original commutators, were not entitled to receive any allowance or stipend or revenue or emolument of any nature or kind from said fund administered by said Respondents, under the terms of said statute 22 Vic., chap. 66, unless the interest, revenues and accruals on said fund, and contributions from other sources there-

to, were sufficient to allow the payment of certain allowances or emoluments therefrom after the deduction of the sums payable to the original commutators.

That the said Reverend John Fairlie, Reverend David W. Morison, and Reverend Charles A. Tanner, of Richmond, Province of Quebec, have received from said corporation, Respondents, since the fifteenth day of June, eighteen hundred and seventy-five, for, and by reason of their connection with and having been ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, since the said fifteenth day of June, eighteen hundred and seventy-five, the sum of five hundred dollars each, to which
 10 said last mentioned ministers were not entitled, both by reason of having ceased to be entitled to the benefits from the fund administered by said corporation, Respondents, under the terms of the resolution of the eleventh of January, eighteen hundred and fifty-five, the said Reverends John Fairlie, David W. Morison and Charles A. Tanner having ceased to be members of the Presbyterian Church of Canada in connection with the Church of Scotland, and having joined the said Presbyterian Church of Canada as aforesaid, and because the revenues and interests accruing on said fund administered by said corporation, Respondents, were not sufficient to pay the said Reverends John Fairlie, David W. Morison and Charles A. Tanner, any allowance or emolument whatever, after the
 20 payment and settlement of all legal claims upon the revenues of said fund, and said Reverends John Fairlie, David W. Morison and Charles A. Tanner, were not entitled, respectively, to said sums of five hundred dollars each, either from the revenues and interest or from the capital of said fund so administered, as aforesaid by the corporation, Respondents.

That by the terms of the said Statute (22 Vic., chap. 66), incorporating the corporation, Respondents, it is provided that at the first meeting of the Synod of the said Church there should be elected, by the said Synod, seven members of the said Board, Respondents, of whom four should be laymen and three ministers, all members of the Presbyterian Church of Canada in connection with the
 30 Church of Scotland, in place of two laymen and one minister, members of the said Board, who should then retire, and that thereafter two ministers and two laymen should retire from the said Board annually, in rotation, on the third day of the annual meeting of the said Synod, and that the place of the retiring members of the said Board, Respondents, should be supplied by two ministers and two laymen, being ministers or members in full communion of the said Church, then to be elected by the said Synod.

That on the fourteenth day of June, eighteen hundred and seventy-five, the following persons composed the duly elected eligible members of the said Board, Respondents, entitled to administer the funds and property entrusted them under
 40 the provisions of the said Act, as appears by the Acts and Proceedings of the said Synod for the year eighteen hundred and seventy-five.

Reverend John H. Mackerras, Master of Arts, Professor in Queen's College, Kingston, Province of Ontario, the said Reverend Daniel M. Gordon, Reverend John Cook, D.D., Reverend John Jenkins, D.D., Reverend Gavin Lang, James Michie, Esquire, merchant, Toronto, Province of Ontario, Alexander Mitchell, Esquire, merchant, Montreal, Province of Quebec, William Darling, Esquire, merchant, Montreal, Province of Quebec; the said Sir Hugh Allan, John L. Morris, Esquire, Robert Dennistoun, Esquire, and William Walker, Esquire.

RECORD.

*In the
Superior
Court.*

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
continued.

RECORD.

In the
Superior
Court.

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
continued.

That since the date of the said enactment, incorporating the corporation, Respondents (22 Vic., chap. 66), four members of the said Board, Respondents, should have retired therefrom at each annual meeting of the said Synod.

That in the month of June, eighteen hundred and seventy-six, the following members of the said Board, Respondents, by law ceased to be members of said Board, and should have retired therefrom, to wit, the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, and Robert Dennistoun, Esquire.

That in the month of June, eighteen hundred and seventy-seven, the following members of the said Board by law ceased to be members of said Board, Respondents, and should have retired therefrom, to wit, the said Reverend John Cook, Reverend Daniel M. Gordon, John L. Morris, Esquire, and Sir Hugh Allan.

That in the month of June last past, 1878, the following members of the said Board, Respondents, by law, ceased to be members of the said Board, and should have retired therefrom, to wit, the said Reverend John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire.

That the remaining member of the Board, to wit, the said James Michie, Esquire, has seceded from the said Presbyterian Church of Canada in connection with the Church of Scotland, and has joined the said Presbyterian Church in Canada, and has ceased to be a member of the Presbyterian Church of Canada in connection with the Church of Scotland, and has *ipso facto* vacated his seat as a member of the Board, Respondents, and the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, John L. Morris, Esquire, and Sir Hugh Allan, heretofore members of the said Board, Reverend John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire, were not legally re-elected and appointed members of the said Board, Respondents, and they and the remaining members of the said Board illegally pretend to exercise, and do in fact exercise and perform all the functions appertaining to legally elected and appointed members of the said Board.

That the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, John L. Morris, Esquire, and Sir Hugh Allan, Reverend John H. Mackerras, James Michie, Esquire, Alexander Mitchell, Esquire, and William Darling, Esquire, are not entitled to administer the said fund, or to be or remain as members of the corporation, Respondents, and should be removed from the said Board, and the said Respondents are not entitled further to administer the funds under the control of the corporation, Respondents, or to make any infringement on the capital thereof, or to disburse the revenues thereof in any manner whatever, the said Board being illegally constituted.

That the said corporation, Respondents, have infringed upon the capital of the said fund under their management and control in the manner hereinbefore indicated, and have illegally paid money, proceeds of the capital and revenues of the said fund in the manner hereinbefore indicated, without any legal power or authority so to do, and have illegally continued and permitted the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh

Allan, John L. Morris, Esquire, Reverend John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire, to act as members of the said Board, Respondents, without having fulfilled the formalities prescribed by law and the Act of Incorporation of the corporation, Respondents, for their election as members of the said Board, and all the members now comprising the Board of the corporation, Respondents, are illegally exercising the power of legally elected members, and the said corporation, Respondents, composed as aforesaid, are now acting beyond their power in continuing the exercise of the powers conferred on the said Board without having a *quorum* of the said Board duly elected as members of the said Board, and by permitting the said parties, not being members thereof, to take part in the deliberations and proceedings thereof, and by administering the funds under their control illegally and contrary to the terms of the Act of the heretofore Province of Canada, incorporating the Board, to wit, 22 Vic., cap. 66.

That the corporation, Respondents, have hitherto made the half-yearly payments of ministers' allowances from the said Fund some time before the day on which such payments to ministers would become due, to those entitled to receive same, and the corporation, Respondents, as Petitioner has been credibly informed and believes, are immediately about illegally to issue cheques in payment of, and to pay the pretended allowances which become due on the first day of January next (amounting to about ten thousand dollars).

That unless the Respondents are restrained from making payments of the said allowances last hereinbefore mentioned, the said Fund will be deteriorated to the extent of ten thousand dollars on or about the first day of January, eighteen hundred and seventy-nine.

That the said Petitioner has a personal interest in the funds administered by the Respondents, and more especially in that portion of the funds so administered by them arising from the commutation of claims of ministers upon the Clergy Reserves and the proceeds thereof, and the said Petitioner has a right to allowances therefrom for life, provided he maintains his connection with the Presbyterian Church of Canada in connection with the Church of Scotland, and does not cease to be a minister in connection therewith, which said allowances and which said interest in the said Funds are endangered by the infringement upon the capital of the said Fund, made by the Board, Respondents, and by the illegal payments hereinbefore indicated or made or that may hereafter be made by the Board, Respondents, out of the capital of the said Fund or the interest or revenues accruing thereon.

That all the payments heretofore made by Respondents to the persons hereinbefore mentioned, since the fifteenth day of June, eighteen hundred and seventy-five, or contemplated to be made out of the said Fund, as hereinbefore stated, are contrary to the provisions of the Statute of the heretofore Province of Canada, 22 Vic. chap. 66, and in so far as they may be ostensibly authorised by the Acts of the Parliament of Quebec, or of any of them, are illegal and unconstitutional, and *ultra vires* of the corporation, Respondents, as Petitioner is advised and verily believes.

Wherefore the said Petitioner, personally and in his said qualities, prays that a writ of injunction may issue against the said Corporation, and against the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire,

RECORD.

In the
Superior
Court.

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
—continued.

RECORD. Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, John L. Morris, Esquire, Reverend John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire, enjoining them and each of them to appear before this Honorable Court, or a Judge thereof, to answer the present petition.

*In the
Superior
Court.*
—
No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
continued.

That the Act of the Legislature of the Province of Quebec, intituled "An Act to Amend the Act intituled an Act to incorporate the Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," passed in the thirty-eighth year of Her Majesty's reign (38 Vic. chap. 64), may be adjudged and declared to be unconstitutional and illegal, and be rescinded and revoked, and that the subject matter thereof as therein presented may be declared to be *ultra vires* of the Legislature of the said Province of Quebec, and that it be declared and adjudged, by the judgment to be rendered upon this petition, that the said corporation, Respondents, are acting and taking proceedings beyond their power, and without having fulfilled the formalities prescribed by law, and by the Act of Incorporation thereof, by permitting the said last-named persons to act as members of the said Board and of the said Corporation without having been elected as members of such Board in the manner provided by law and by the said Act of Incorporation, and further, by administering, intermeddling with and disbursing the funds and property of the said Corporation in a manner and for purposes not authorized by the said Act of Incorporation of the 22nd Vic. chap. 66; and by holding, administering, dispensing and disposing of the funds and property of the said Corporation, without having a sufficient number of members of the said Corporation elected in the manner provided by law, and in the Act of Incorporation thereof, to constitute a quorum of the said Corporation or of the said Board. And that it be further adjudged and declared that the said Rev. John Jenkins, Rev. Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Rev. John Cook, Rev. Daniel M. Gordon, Sir Hugh Allan, John L. Morris, Esquire, Rev. John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire, have no right or authority to sit, deliberate, or act as members of the said Corporation or Board, and thereupon further prays that the said Corporation be by such judgment restrained from acting and proceeding in respect of the duties imposed upon them by the said Act of Incorporation of the 22 Vic. chap. 66, and from administering, using, dispensing, or disposing of the funds and property of the said Corporation; and be ordered and enjoined not to act in respect of the said duties and powers, and in respect of the said funds and property, until an adequate and sufficient number of members thereof shall have been duly elected in the manner and with the formalities provided by law and by the said last mentioned Act of Incorporation.

And further, that the Respondents, Rev. John Jenkins, Rev. Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Rev. John Cook, Rev. Daniel M. Gordon, Sir Hugh Allan, Rev. John H. Mackerras, William Darling, Esquire, Alexander Mitchell, Esquire, and John L. Morris, Esquire, be restrained from acting as members of the said Board, and be enjoined not to sit or act as, or perform any of the functions of members of the said Board, unless and until they shall be duly elected members thereof, in the manner and with the formalities provided by the said Act of Incorporation of the said Board, 22 Vic. chap. 66.

And the Petitioner further prays, that it be ordered, that the said Respondents, and each and all of them do forthwith suspend any and all acts and proceedings in their several capacities respectively; in respect of the administration of the said funds and property, and in respect of all matters in dispute in this cause.

That it be adjudged and declared that the fund administered by the corporation, Respondents, amounting to the sum of four hundred and sixty-three thousand three hundred and seventy-one dollars and fifty-two cents (\$463,371.52), is a fund held in trust by them for the benefit of the Presbyterian Church of Canada in connection with the Church of Scotland, and for the benefit of the ministers and missionaries who retain their connection therewith and who have not ceased to be ministers thereof, and for no other purpose whatever.

That the said Reverend John Cook, Reverend James C. Muir and Reverend George Bell, be declared to have ceased to be members of the Presbyterian Church of Canada in connection with the Church of Scotland, and not to be entitled to any sum of money or benefit from the funds administered by Respondents. That the said Reverend John Fairlie, Reverend David W. Morison and Reverend Charles A. Tanner, be declared not entitled to receive any sum of money whatever from the funds administered by the Respondents, and that Respondents be enjoined and ordered not to pay said Rev. John Cook, Rev. James C. Muir, Rev. George Bell, Rev. John Fairlie, Rev. David W. Morison and Rev. Charles A. Tanner, or any of them, any sum of money whatever from the capital or revenues of the funds administered by them, and further, that the said corporation, Respondents, be adjudged and ordered not to pay to them the said Rev. John Cook, Rev. James C. Muir, Rev. George Bell, Rev. John Fairlie, Rev. David W. Morison, Rev. Charles A. Tanner, or to any other person whomsoever, any sum of money whatever out of the capital or revenues or interest accrued and to accrue on said fund, under pain of all legal penalties, until such further order shall be made upon the said petition, as to this Honorable Court, or any Judge thereof, shall seem meet and expedient, and the said Petitioner hereby declares his readiness to give good and sufficient security in the manner prescribed by and to the satisfaction of the said Court, or of a Judge thereof, in the sum of six hundred dollars, or any higher sum fixed by the said Court or Judge, for the costs and damages which the Respondents may suffer by reason of the issue of said writ of injunction, and the said Petitioner hereby offers as such security, James S. Hunter, notary public, and Joseph Hickson, railway manager, both of the city and district of Montreal, who will justify as to their sufficiency if required, the said Petitioner reserving the right to take such other and further conclusions in the matter as he may be advised and permitted, the whole with costs of suit and of Exhibits against such of said Respondents as may contest the present action, but without costs against such of the Respondents as may declare that they abide the order of the Court, of which costs the undersigned Attorneys pray distraction.

Montreal, 31st December, 1878.

J. J. C. ABBOTT, Q.C.,
M. M. TAIT,

Of Counsel.

MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioners.

RECORD.

In the
Superior
Court.

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1878—
continued.

RECORD.

*In the
Superior
Court.*

No. 3.
Petition and
Order for
Injunction
and Writ of
Injunction,
filed 31st
December
1873—
continued.

I, the undersigned, one of the Justices of the Superior Court for Lower Canada, sitting in the district of Montreal, having read the foregoing petition, and the affidavits and documentary evidence produced in support of the same, and seeing further the offer of the said Petitioner to give good and sufficient security in the manner prescribed by me and to my satisfaction, I do approve of the security offered by Petitioner, and do order and prescribe that the said sureties offered, to wit, James S. Hunter, notary public, and Joseph Hickson, railway manager, both of the city and district of Montreal, do enter into a bond before me to the extent of twelve hundred dollars, for costs and damages which the Respondents may suffer by reason of the writ of injunction herein ordered to issue; they then and there justifying as to their sufficiency upon oath; and that thereupon a writ of injunction do issue according to the prayer of the said petition, to summon the Respondents to be and appear before any one of the Honorable Justices of the said Superior Court at Montreal, aforesaid, on the thirty-first day of January next (eighteen hundred and seventy-nine), to answer the premises, and pending such further order and judgment as may be rendered in this cause. I do hereby order and enjoin the said corporation, Respondents, and the said Respondents, the Rev. John Jenkins, Rev. Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Rev. John Cook, Rev. Daniel M. Gordon, Sir Hugh Allan, John L. Morris, Esquire, Rev. John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire, and each of them forthwith, to suspend any and all acts and proceedings in their several capacities, respectively, in respect of the payment of all sums of money, and of the administration of the funds under the control of the said corporation, Respondents, and in respect of all other matters in dispute in this cause under pain of all penalties provided by law.

Montreal, 31st December, 1878.

L. A. JETTE,
J.

(On the back.)

I hereby fix this cause for hearing before me in number One Division of this Court, on Saturday the fifth day of April, instant, on the petition to dissolve or suspend the injunction, at eleven o'clock in the forenoon.

Montreal, 1st April 1879.

L. A. JETTE,
J.

(Endorsed.)

Petition and Order—Filed 31st Decr 1878.

(Paraphed) L. A. J.

(Paraphed) G. H. K., Dep. P. S. C.

Schedule No. 3.

Canada,
Province of Quebec,
District of Montreal.

In the Superior Court.

The Reverend Robert Dobie, - - - - - Petitioner.
vs.

"Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland" *et al.*, - - - - - Respondents.

10 Douglas Brymner, of the city of Ottawa, in the Province of Ontario, employed there in the Civil service, in connection with the Department of Agriculture, being duly sworn doth depose and say :—

I know the Petitioner and Respondents since eighteen hundred and fifty-seven, until the present time.

I have been an elder and member of the Presbyterian Church of Canada in connection with the Church of Scotland, and am intimately acquainted with its affairs and with the affairs of the Board, Respondents, more particularly for the period preceding the fifteenth day of June, eighteen hundred and seventy-five. Since said last-mentioned date, I have carefully examined the printed reports of
20 the Board, Respondents.

From the year eighteen hundred and sixty-four, to the year eighteen hundred and seventy-one, I resided in the city of Montreal, and during the whole of said period I was the editor of a monthly publication styled "The Presbyterian," the recognised organ of the said Presbyterian Church of Canada in connection with the Church of Scotland, and as such I had special opportunities of becoming acquainted with the affairs of the said Presbyterian Church of Canada in connection with the Church of Scotland, and with the proceedings of the Board, Respondents, and the Synod of the said Church, of which latter body I was frequently appointed a member in the capacity of representative elder.
30

I have an intimate acquaintance with the records of the proceedings of the Synod of the said Church, as contained in the official records thereof since eighteen hundred and thirty-one, and am familiar with the circumstances connected with the secularisation of the Clergy Reserves and the commutation of the claims of the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, upon the said Clergy Reserves or on the proceeds thereof, which knowledge I obtained both from the said records and from personal communication for years with many of the ministers who commuted their claims upon the said Clergy Reserves funds.

46 I have taken communication of the petition in this cause, of Petitioner, and to the best of my knowledge and belief the matters alleged as facts in the said petition are true.

From all the sources of knowledge and information at my command it is my firm conviction that the funds administered by the Board, Respondents, arising from the commutation of claims of ministers upon the proceeds of the Clergy Reserves, were intended to be a permanent endowment for the said

RECORD.

In the
Superior
Court.

No. 4.

(Petitioner's
Exhibit No.
1, in support
of Petition
for Writ of
Injunction)
Affidavit of
Douglas
Brymner,
filed 31st
Dec. 1878.

RECORD. Presbyterian Church of Canada in connection with the Church of Scotland, namely, for the benefit of all those persons for all time to come, who should desire to maintain the forms of worship and religious ordinances of the said Presbyterian Church of Canada in connection with the Church of Scotland, and their connection therewith as a branch of the Church of Scotland in Canada, and for the benefit of those ministers and missionaries in connection therewith, who should maintain their connection with said Church and who should not cease to be ministers thereof.

No. 4.
(Petitioner's
Exhibit No.
1, in support
of Petition
for Writ of
Injunction)
Affidavit of
Douglas
Brymner,
filed 31st
Dec. 1878—
continued.

That on the fifteenth day of June, eighteen hundred and seventy-five, a number of the member of the Presbyterian Church of Canada in connection with the Church of Scotland, seceded and withdrew from its communion, and joined themselves with a number of persons connected with other distinct and separate religious organisations existing in different parts of the Dominion of Canada, and adopted the name and designation of "The Presbyterian Church in Canada."

That notwithstanding such secessions, the said Presbyterian Church of Canada in connection with the Church of Scotland, continued its existence and has regularly held meetings of Presbyteries and Synod and is now in existence as a regular church organisation, of which Petitioner and deponent are members.

That according to the best of the knowledge and belief of this deponent the said corporation, Respondents, are illegally administering the funds in their hands, which are trust funds for the benefit of the Presbyterian Church of Canada in connection with the Church of Scotland.

That the rights and interests of the Petitioner in the said funds are endangered by the administration of the Respondents, and without the benefit of a writ of injunction to restrain the said Respondents, the rights and interests of the Petitioner and of the said Presbyterian Church of Canada in connection with the Church of Scotland, and of the members and adherents of the said last mentioned Church, will sustain injury.

That the said Respondents are immediately about to make payments out of the said funds to divers ministers connected with the said Presbyterian Church in Canada, amounting to the sum of at least ten thousand dollars. That said payments will be made on the first of January next, and there is an urgent necessity that the same should be prevented and said payments stayed.

That such payments, if made, will seriously deteriorate the funds now in controversy between Petitioner and Respondents.

And I have signed,

DOUGLAS BRYMNER.

Sworn to and acknowledged before me, at the city of Ottawa, this thirtieth day of December, 1878.

R. J. WICKSTEED,
Commissioner for taking affidavits in Ontario for use in Quebec.

(Endorsed.)

Affidavit of Douglas Brymner—Petitioner's Exhibit No. "One."—Filed in support of Petition for writ of injunction this thirty-first day of December 1878.

L. A. J.

(Paraphed) G. H. K., Dep. P.S.C.

Schedule No. 4.

Canada,
Province of Quebec, }
District of Montreal.

In the Superior Court.

RECORD.

In the
Superior
Court.

The Reverend Robert Dobie, - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland" *et al.*, - - - - - Respondents.

No. 5.
(Petitioner's
Exhibit No.
2, in support
of Petition
for Writ of
Injunction)
Affidavit of
the Revd.
Gavin Lang,
filed 31st
Dec. 1878.

10 The Reverend Gavin Lang, of the city and district of Montreal, being duly sworn doth depose and say :—

I am a minister of the Presbyterian Church of Canada in connection with the Church of Scotland, and am pastor of St Andrew's Church in Montreal aforesaid.

My name is entered as a member of the Board, Respondents.

I have taken communication of the petition in this cause of Petitioner, and to the best of my knowledge and belief the allegations of fact as therein contained and set forth are true and correct.

20 That according to the best of my knowledge and belief the said corporation, Respondents, are illegally administering the funds in their hands, which are trust funds for the benefit of the Presbyterian Church of Canada in connection with the Church of Scotland, and that the rights and interests of the Petitioner in the said funds are endangered by the administration of the Respondents.

That the said Respondents are immediately about to make another half-yearly payment out of the said Fund, and said payment will be so made on or about the first day January next, and there is urgent necessity that the same should be stopped, and without the benefit of a writ of injunction to restrain the said Respondents, the rights and interests of the Petitioner and of the said Presbyterian Church of Canada in connection with the Church of Scotland, and of the
30 members and adherents of the said last mentioned Church, will sustain injury.

And I have signed.

GAVIN LANG.

Sworn to and acknowledged before us, at the city of Montreal, this twenty-eighth day of December, eighteen hundred and seventy-eight.

J. S. HUNTER,

Commissioner Sup. Court, District of Montreal.

(Endorsed.)

Affidavit of the Rev'd Gavin Lang—Petitioner's Exhibit No. "Two."—Filed in support of Petition for writ of injunction this thirty-first day of December, 1878

40 (Paraphed) L. A. J.

(Paraphed) G. H. K., Dep'y P. S. C.

d in
878.

RECORD.

Schedule No. 5.

In the
Superior
Court.

Canada,
Province of Quebec, }
District of Montreal }

In the Superior Court.

The Reverend Robert Dobie - - - - - Petitioner.

No. 6.
(Petitioner's
Exhibit No.
3, in support
of Petition
for Writ of
Injunction)
Affidavit of
the Revd.
William
Simpson,
filed 31st
Dec. 1878.

vs.
"Board for the Management of the Temporalities Fund of
the Presbyterian Church of Canada in connection with
the Church of Scotland," *et al.*, - - - Respondents.

The Reverend William Simpson, of Como, in the district of Vaudreuil, here-¹⁰
tofore a minister and pastor of the congregation and church at Lachine, in the
district of Montreal, under the ecclesiastical jurisdiction of the Presbyterian
Church of Canada in connection with the Church of Scotland, being duly sworn
doth depose and say:—

1st. That he has taken communication of the Petition in this cause, of Peti-
tioner, and to the best of his knowledge and belief the matters alleged as fact in
the said Petition are true and correct.

2nd. That the deponent is one of the original ministers of the Presbyte-
rian Church of Canada in connection with the Church of Scotland, who commuted
his claim upon the funds arising from the Clergy Reserves in the said Petition
mentioned, and he has a personal knowledge of the proceedings connected with²⁰
the renunciation of rights of ministers of the Clergy Reserve Fund to and in
favour of the Presbyterian Church of Canada in connection with the Church of
Scotland.

That at the time the deponent so renounced his rights to the said Clergy
Reserve Funds, and to the Municipalities Fund arising therefrom, it was his inten-
tion and it was the intention of the Petitioner and all the original commutators who
surrendered their rights, to form and constitute a perpetual endowment for the
benefit of the Presbyterian Church of Canada in connection with the Church of
Scotland, and for the benefit of the ministers and missionaries who maintained their
connection therewith, and who did not cease to be ministers thereof, and it was a
distinct and fundamental condition upon which he surrendered his claim, and upon³⁰
which the other commutators surrendered their individual claims to participate in
the benefits arising from the said Fund, that the said Fund should remain a per-
petual endowment for the benefit of the said Church, and should be incapable of
alienation for any other purpose whatever, and that no one who left the said Church
or who joined any other religious organization should be entitled to receive any
benefit therefrom whatever.

3rd. That the Funds administered by the Respondents, arising from the
commutation of claims of ministers of the said Clergy Reserve Fund, constitute
a trust which the Respondents were bound to administer for the purposes herein-
before indicated, and for no other purpose whatever, and to the best of his know-
ledge and belief the conditions of the said trust have been violated, and the al-
legations of the Petitioner's complaint are well founded in fact.⁴⁰

And he hath signed.

WILLIAM SIMPSON.

Sworn, taken and acknowledged before us, at Montreal, this twenty-seventh day of December, eighteen hundred and seventy-eight. RECORD.

J. S. HUNTER,
Commissioner Sup. Court, District of Montreal.

*In the
Superior
Court.*

(Endorsed.)

Affidavit of the Rev. William Simpson, Petitioner, Exhibit No. Three, filed in support of Petition for writ of injunction this thirty-first day of December, 1878.

(Paraphed) L. A. J.

(Paraphed) G. H. K., Depy. P. S. C.

No. 6.
(Petitioner's
Exhibit No. 3, in support
of Petition
for Writ of
Injunction)
Affidavit of
the Revd.
William
Simpson,
filed 31st
Dec. 1878.
—continued.

Schedule No. 6.

Province of Quebec,
District of Montreal,
No. 2100.

In the Superior Court.

Rev. Robert Dobie of Milton, in the County of Halton, in the Province of Ontario and Dominion of Canada, minister - Petitioner.

vs.

“Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland,” a body politic and corporate, duly incorporated, and having an office and its principal place of business in the city of Montreal, and the Rev. Daniel M. Gordon, Bachelor of Divinity, minister of St. Andrew's Church of Ottawa, Province of Ontario; Rev. John Cook, Doctor of Divinity, minister of St. Andrew's of Quebec, Province of Quebec; Rev. John Jenkins, Doctor of Divinity, minister of St. Paul's Church of Montreal, Province of Quebec; Rev. Gavin Lang, minister of St. Andrew's Church, Montreal, Province of Quebec; Sir Hugh Allan of Ravenscraig, Montreal, Province of Quebec; John L. Morris, Esquire, Advocate of Montreal, Province of Quebec; Robert Denistoun, Esquire, County Judge of Peterborough, Province of Ontario; and William Walker, Esquire, merchant of Quebec, Province of Quebec; the Rev. John H. Mac-kerras of Kingston, in the Province of Ontario; William Darling, Esquire, and Alexander Mitchell, both merchants of the city of Montreal, aforesaid - - - Respondents.

No. 7.
(Petitioner's
Exhibit No. 4) Security
for costs,
filed 31st
Dec. 1878.

James S. Hunter, notary public, and Joseph Hickson, railway manager, both of the city and district of Montreal, present in the chambers of the said

RECORD. Superior Court, promise and undertake for, and on the behalf of the said Petitioner, that if the said Petitioner shall fail in the writ of injunction that they will pay to the said Respondents the costs and damages which the said Respondents may suffer by reason of the issue of the writ of injunction herein to issue to the extent of the sum of twelve hundred dollars, current money of Canada.

*In the
Superior
Court.*

No. 7.

(Petitioner's
Exhibit No.

4) Security

for costs,

filed 31st

Dec. 1878—

continued.

J. HICKSON,
J. S. HUNTER.

Taken and acknowledged before me at Montreal this thirty-first day of December, one thousand eight hundred and seventy-eight.

L. A. JETTÉ, 10
J.

The within mentioned James S. Hunter and Joseph Hickson, security for the costs and damages which the Respondents may suffer by reason of the issue of the writ of injunction herein to issue, severally make oath and say, and first this deponent, James S. Hunter for himself, saith that he is a householder, resident in the city of Montreal, and is worth the sum of twelve hundred dollars, current money of Canada, over and above what will pay all his debts; and this deponent, J. Hickson, for himself, saith that he is a householder, resident in the city of Montreal, and is worth the sum of twelve hundred dollars currency, over and above what will pay all his debts, and they have signed, these presents being 20 first duly read to them.

J. HICKSON,
J. S. HUNTER.

Sworn and acknowledged at Montreal, before me, this thirty-first day of December, one thousand eight hundred and seventy-eight.

L. A. JETTÉ,
J.

The foregoing security is in the manner prescribed by me, and is to my satisfaction.

Montreal, 31st December, 1878.

L. A. JETTÉ, 30
J.

HUBERT, HONEY & GENDRON, P.S.C.

(Endorsed.)

Sec'y. for costs—Filed 31st December, 1878.

(Paraphed) H. H. & G., P.S.C.

Schedule No. 8.

Province of Quebec, }
District of Montreal. } In the Superior Court.

The Rev. Robert Dobie - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

The Respondents appear in this cause by the undersigned their attorney,
10 with reservation of all legal objections founded on the irregularity or insufficiency of the process in this cause issued, or the service thereof, or any other matter or cause whatever.

Montreal, 31st January, 1879.

JOHN L. MORRIS,
Att'y. for Defendants.

(Received copy.)

MACMASTER, HALL & GREENSHIELDS,
Att'ys. for Plaintiff.

(Endorsed.)

Appearance—Filed 31st January 1879.

(Paraphed) G. H. K., Depy. P.S.C.

RECORD.

*In the
Superior
Court.*

No. 8.
Appearance
for Respon-
dents, filed
31st Jany
1879.

Schedule No. 9.

Province of Quebec, }
District of Montreal. } In the Superior Court.

The Rev. Robert Dobie - - - - - Petitioner,

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

The Respondent, Sir Hugh Allan, appears in this cause by the undersigned
30 his attorney, with reservation of all legal objections founded on the irregularity or insufficiency of the process in this cause issued, or the service thereof, or any other matter or cause whatever.

Montreal, 31st January 1879.

D. E. BOWIE,
Atty. for Respondent, Sir Hugh Allan.

(Duly received copy.)

MACMASTER, HALL & GREENSHIELDS,
Attys. for Petitioner.

(Endorsed.)

Appearance—Filed 31st January, 1879.

(Paraphed) H. H. & G., P.S.C.

No. 9.
Appearance
for Respon-
dent, Sir
Hugh Allan,
filed 31st
Jany 1879.

RECORD.

Schedule No. 10.

*In the
Superior
Court.*

Province of Quebec, }
District of Montreal. }

In the Superior Court.

No. 10.
Appearance
for Respondent
Rev. Gavin Lang,
filed 31st
Jany 1879.

The Reverend Robert Dobie - - - - - Petitioner.

vs.

"Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

The Respondent, the Rev. Gavin Lang, appears in this cause by the undersigned his attorney, with reservation of all legal objections founded on the irregularity or insufficiency of the process in this cause issued, or the service thereof, or any other matter or cause whatever.

Montreal, 31st January, 1879.

D. E. BOWIE,

Attorney for Respondent, the Rev. Gavin Lang.

(Duly received copy.)

MACMASTER, HALL & GREENSHIELDS,
Attys. for Petitioner.

(Endorsed.)

Appearance—filed 31st January, 1879.

(Paraphed.) H. H. & G., P.S.C. 20

No. 11.
Petition by
Respondents
that Petitioner be
ordered to
increase his
security to
the amount
of \$159,700.
and notice,
filed 5th
Feby 1879.

Canada, }
Province of Quebec, }
District of Montreal. }

Schedule No. 13.

Superior Court.

The Rev. Robert Dobie, - - - - - Petitioner.

vs.

"Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

To the Honorable the Superior Court for Lower Canada, district of Montreal, or 30
to any one of the Honorable Justices of the said Court sitting in and for
the district of Montreal.

The petition of the Respondents in this matter, Respectfully sheweth:

That under the provisions of the Act of the Legislature of the Province of
Quebec, forty-first Victoria, chapter fourteen and section four, it is provided that
a writ of injunction shall not issue unless the person applying therefor first gives

good and sufficient security in the sum of (\$600.00) six hundred dollars, or any other higher sum fixed by the said Court or Judge, for the costs and damages which the Defendant or the person against whom the writ of injunction is directed, may suffer by reason of the issue thereof, and that upon the return of the writ the Court or a Judge thereof may order that such security shall be increased to such amount as it may be deemed expedient.

That the injunction and order issued in this cause was obtained summarily upon *ex parte* affidavits, without notice to Respondents, and it was impossible for the learned Judge, issuing said injunction and order, and who fixed the security for said costs and damages at twelve hundred dollars, to estimate the damages which the said Respondents might suffer by said injunction and order.

That as shewn by the affidavits filed in support hereof, and copies whereof are hereunto annexed, the Respondents may suffer damages by reason of said injunction and order to the extent of (\$159,700.00), one hundred and fifty-nine thousand, seven hundred dollars.

Wherefore the Petitioners pray that said Petitioner, the Rev. Robert Dobie, may be ordered to increase his said security to the sum of (\$159,700.00), one hundred and fifty-nine thousand, seven hundred dollars, within five days, or such other delay as may be fixed, and that in default of such increased security being put in to the satisfaction of the said Court, or of a Judge thereof, within such delay, that the said injunction and order may be dissolved and annulled and the said petition, in so far as it asks for an injunction, be hence dismissed with costs, *distracts*, to the undersigned attorney.

Montreal, 3rd February, 1879.

JOHN L. MORRIS,
Attorney for Respondents, Petitioners.

To Messrs. MACMASTER HALL & GREENSHIELDS,
Attorneys for Petitioner.
Sirs,

Take notice of the foregoing Petition, and that the same will be presented to the Superior Court, in the Practice Court, sitting in the Court House, in the city of Montreal, for allowance, the fifth day of February instant, at eleven of the clock in the forenoon, or so soon thereafter as counsel can be heard.

Montreal, 3rd February, 1879.

JOHN L. MORRIS,
Attorney for Respondents, Petitioners.

(Endorsed.)

Petition and Notice—Filed 5th February, 1879.

(Paraphed) G. H. K., Depy. P.S.C.

To the 13th inst. to answer.

(Paraphed) L. H. C., Dep. P.S.C.

RECORD.

In the
Superior
Court.

No. 11.
Petition by
Respondents
that Peti-
tioner be
ordered to
increase his
security to
the amount
of \$159,700.
and notice,
filed 5th
Feby 1879.
continued.

RECORD.

In the
Superior
Court,
Canada,
Province of Quebec, } Superior Court.
District of Montreal.

No. 11A.
Affidavit of
Wm. Darling
filed with
Petition for
increase of
Security,
filed 5th
Feby 1879.

The Rev. Robert Dobie - - - - - Petitioner.

vs.

"Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents. 10

William Darling of the city and district of Montreal, one of the Respondents, being duly sworn, deposeth and saith :

I am the Chairman of the Board, Respondents, and thoroughly conversant with all its affairs.

On the second of January last when the writ of injunction issued in this cause, was served upon the said Board, amongst other securities it held city of Montreal six per cent. bonds, amounting at their par value to (\$206,000.00) two hundred and six thousand dollars, of which (\$146,000.00) one hundred and forty-six thousand dollars currency have matured and become due.

That the effect of the said writ of injunction, if allowed to remain in force, 20 will be to prevent the said Board from reinvesting the said sum of (\$146,000.00) one hundred and forty-six thousand dollars, which they could do in safe security at seven per cent. interest per annum, whereby the said Board will sustain a loss and damage of (\$10,220.00) ten thousand two hundred and twenty dollars per annum from the first day of May next.

That if this case goes to the Court of Appeals, Supreme Court and Privy Council in England, as it may be prolonging proceedings for several years, the damage suffered by said Board from loss of interest alone on said sum of (\$146,000.00) one hundred and forty-six thousand dollars will be very considerably increased, and might reach even the sum of (\$60,000.00) sixty thousand dollars or 30 even more.

That the interest per annum on the balance of said city of Montreal bonds and stock which are not yet due, to wit, on (\$74,200.00) seventy-four thousand two hundred dollars is (\$4,594.00) four thousand five hundred and ninety-four dollars, the loss of interest on which, per annum, is (\$321.58) three hundred and twenty-one dollars and fifty-eight cents, which if proceedings in this cause are prolonged, as above stated, may amount to over (\$1,500.00) one thousand five hundred dollars.

That in addition to said sum the said Board hold invested the sum of (\$88,500.00) eighty-eight thousand five hundred dollars in Montreal Harbour 40 Bonds, paying six and one-half per cent. interest per annum, amounting to (\$5,752.50) five thousand seven hundred and fifty-two dollars and fifty cents of interest per annum.

That by virtue of said writ of injunction said Board will be prevented from receiving said amount of (\$5,752.50) five thousand seven hundred and fifty-two dollars and fifty cents, and from investing the same at seven per cent., which they could do, whereby said Board will sustain a loss and damage of (\$402.64)

four hundred and two dollars and sixty-four cents per annum in interest, which in case of appeal as above, might be increased to (\$2,000.00) two thousand dollars or even more.

That in addition to the foregoing the said Corporation held on said second of January last (466) four hundred and sixty-six shares of stock in the Merchants' Bank of Canada, which at that date were worth, at market quotations, seventy-nine cents on the dollar, and which have depreciated to seventy-four cents on the dollar, the loss occasioned by such depreciation being (\$2,330.00) two thousand three hundred and thirty dollars.

10 And the said Corporation also held on said second of January last (326) three hundred and twenty-six shares of stock in the Consolidated Bank of Canada, which on that date were worth in the market fifty-seven cents on the dollar, but which now have depreciated to forty-eight cents on the dollar, the loss occasioned by such depreciation being already (\$2,934.00) two thousand nine hundred and thirty-four dollars.

That the position of all Bank stocks, including those above mentioned, is very uncertain and varying from day to day, and the said Board, as Trustees, have been constantly watching the markets with the view, if deemed advisable, of selling the whole or part of said stocks and reinvesting the proceeds in mortgages or other safe security, but the said Board owing to said injunction are prevented from administering the said stocks or realizing the same, and as said stocks have a tendency to go still lower, may sustain a loss in depreciation which might amount to the whole sum invested in said stocks or (\$76,200.00) seventy-six thousand two hundred dollars.

That in consequence of the present injunction the said Board and Respondents are prohibited from paying any of the stipends to ministers entitled to receive the same, in consequence of which said Respondents are liable to be sued in separate actions for the said stipends, and the said Respondents may thus be subjected to heavy damages in the shape of interest and costs of suit, to an amount estimated by deponent at not less than (\$20,000.00) twenty thousand dollars.

That the whole of the above losses and damages which the Respondents may suffer by reason of said writ of injunction and order amount to (\$159,700.00) one hundred and fifty-nine thousand seven hundred dollars, and I have signed.

W. DARLING,

Sworn and acknowledged at Montreal, in the Province of Quebec, before me, this first day of February, eighteen hundred and seventy-nine.

ALEX. MOFFAT,

Commissioner Superior Court, District of Montreal.

(Endorsed.)

Affidavit of William Darling—Filed 5 February, 1879.

RECORD.

In the
Superior
Court.

No. 11A.
Affidavit of
Wm. Darling
filed with
Petition for
increase of
Security,
filed 5th
Feby 1879.
—continued.

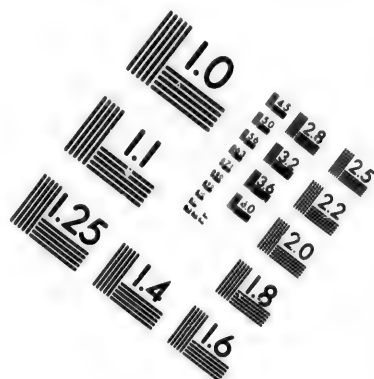
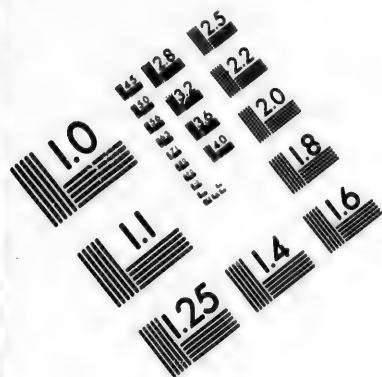
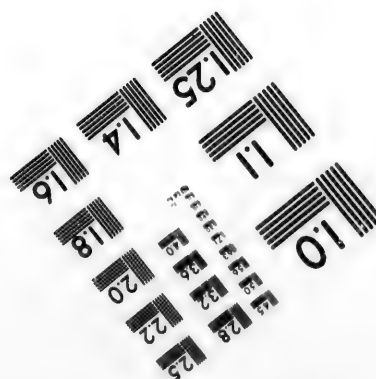
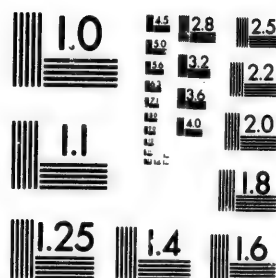


IMAGE EVALUATION TEST TARGET (MT-3)



28
25
22
20

51

RECORD.

—
In the
Superior
Court.

Canada,
Province of Quebec, }
District of Montreal.

Superior Court.

The Rev. Robert Dobie, - - - - - Petitioner.

vs.

"Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

No. 11B.
Affidavit of
James Croil,
filed with
Petition for
increase of
Security,
filed 5th
Feby 1879.

James Croil, of the city and district of Montreal, being duly sworn, de-
poseth and saith :

I was for over nine years, previous to the fifteenth day of June, eighteen
hundred and seventy-five, business agent of the Presbyterian Church of Canada
in connection with the Church of Scotland, and I am and have been for eleven
years secretary-treasurer of the "Board for the Management of the Temporal-
ities Fund of the Presbyterian Church of Canada in connection with the Church
of Scotland."

On the second of January last, when the writ of injunction issued in this
cause was served upon the said Board, amongst other securities it held city of
Montreal six per cent bonds, amounting at their par value to (\$206,000.00) two
hundred and six thousand dollars, of which (\$146,000.00) one hundred and 20
forty-six thousand dollars currency have matured and become due.

That the effect of the said writ of injunction, if allowed to remain in force,
will be to prevent the said Board from reinvesting the said sum of (\$146,000.00)
one hundred and forty-six thousand dollars, which they could do in safe security
at seven per cent interest per annum, whereby the said Board will sustain a loss
and damage of (\$10,220.00) ten thousand two hundred and twenty dollars per
annum from the first day of May next.

That if this case goes to the Court of Appeals, Supreme Court and Privy
Council in England, as it may do, prolonging proceedings for several years, the
damage suffered by said Board from loss of interest alone on said sum (\$146,000.00), 30
one hundred and forty-six thousand dollars will be very considerably increased,
and might reach even the sum of (\$60,000 '0) sixty thousand dollars or even
more.

That the interest per annum on the balance of said city of Montreal
bonds and stocks which are not yet due, to wit, on (\$74,200.00) seventy-
four thousand two hundred dollars is (\$4,594.00) four thousand five hundred and
ninety-four dollars, the loss of interest on which per annum is (\$321.58) three
hundred and twenty-one dollars and fifty-eight cents, which, if proceedings in
this cause are prolonged, as above stated, may amount to over (\$1,500.00) one
thousand five hundred dollars.

That in addition to said sum the said Board hold invested the sum of (\$88,500.)
eighty-eight thousand five hundred dollars in Montreal Harbor bonds, paying
six and one-half per cent interest per annum, amounting to (\$5,752.50) five thou-
sand seven hundred and fifty-two dollars and fifty cents of interest per annum.

That by virtue of said writ of injunction, said Board will be prevented from
receiving said amount of (\$5,752.50) five thousand seven hundred and fifty-two

dollars and fifty cents, and from investing the same at seven per cent, which they could do, whereby said Board will sustain a loss and damage of (\$402.64) four hundred and two dollars and sixty-four cents per annum in interest, which, in case of appeal as above, might be increased to (\$2,000.00) two thousand dollars or even more.

That in addition to the foregoing the said Corporation also held on said second of January last (466) four hundred and sixty-six shares of stock in the Merchants' Bank of Canada, which, at that date, were worth at market quotations seventy-nine cents on the dollar, and which have depreciated to seventy-four cents on the dollar, the loss occasioned by such depreciation being (\$2,330.00) two thousand three hundred and thirty dollars.

And the said Corporation also held on said second of January last (326) three hundred and twenty-six shares of stock in the Consolidated Bank of Canada, which on that date were worth in the market fifty-seven cents on the dollar, but which now have depreciated to forty-eight cents on the dollar—the loss occasioned by such depreciation being already (\$2,934.00) two thousand nine hundred and thirty-four dollars.

That the position of all bank stocks, including those above mentioned, is very uncertain and varying from day to day, and the said Board, as Trustees, have been constantly watching the markets with the view, if deemed advisable, of selling the whole or part of said stocks and reinvesting the proceeds in mortgages or other safe security, but the said Board owing to said injunction are prevented from administering the said stocks or realising the same, and as said stocks have a tendency to go still lower, may sustain a loss in depreciation which might amount to the whole sum invested in said stocks or (\$76,200.00) seventy-six thousand two hundred dollars.

That in consequence of the present injunction the said Board and Respondents are prohibited from paying any of the stipends to ministers entitled to receive the same, in consequence of which said Respondents are liable to be sued in separate actions for the said stipends, and the said Respondents may thus be subjected to heavy damages in the shape of interest and costs of suit to an amount estimated by deponent at not less than (\$20,000.00) twenty thousand dollars.

That the whole of the above losses and damages which the Respondents may suffer by reason of said writ of injunction and order amount to (\$159,700.00) one hundred and fifty-nine thousand seven hundred dollars.

And I have signed.

JAMES CROIL.

Sworn and acknowledged at the city of Montreal, in the Province of Quebec, before me, this first day of February, eighteen hundred and seventy-nine.

ANDREW J. SIMPSON,

A Commissioner Superior Court, District of Montreal.

(Endorsed.)

Affidavit of James Croil—Filed 5th February, 1879.

(Paraphed) G. H. K., Depty. P. S. C.

RECORD.

In the
Superior
Court.

No. 11B.
Affidavit of
James Croil,
filed with
Petition for
increase of
Security,
filed 5th
Feby 1879
—continued.

RECORD.

Schedule No. 14.

In the
Superior
Court.

Canada,
Province of Quebec, }
District of Montreal.

In the Superior Court.

No. 12.
Answer to
Petition,
filed 12th
Feby 1879.

The Revd Robert Dobie, - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland" *et al.*, - - - - - Respondents.

and

The said Respondents - - - - - Petitioners. 10

And the said Reverend Robert Dobie for answer to the petition in this matter presented by the Respondents said :

That the Honorable Judge who fixed the security to be given by the Petitioner, the Reverend Robert Dobie, at the sum of twelve hundred dollars, was fully capable of estimating what costs and damages the Respondents might suffer by reason of the said writ of injunction, and that the sum fixed by him was ample and sufficient to cover such costs and damages.

And the said Petitioner, the Reverend Robert Dobie, further saith :

That the said Respondents by making the application they did make after 20 the return of the said writ for additional security waived and abandoned their right to make the present application.

That the present application is, moreover, too late, not having been made upon the return of the said writ; and not having been made till the delay for pleading to the merits had expired.

Wherefore, the said Petitioner, the said Robert Dobie, prays that the said petition presented by the said Respondents, may be hence dismissed with costs.

Montreal, 12th February, 1879.

MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioner. 30

And the said Petitioner, Robert Dobie, without waiver of the foregoing answer, but reserving to himself all the benefit and advantage thereof for further answer to the said petition, saith :

That the said Respondents are not entitled to have the conclusions of the said petition for or by reason of any of the matters therein or in said affidavits alleged.

That the allegations of the said petition and of the said affidavits setting forth the pretended losses which the said Respondents might suffer by reason of the issue of the said writ of injunction are altogether exaggerated and absurd, and are too remote to be taken into consideration in estimating the security to be 40 given for costs and damages, under the said Act under which the said writ of injunction was issued.

That under and by virtue of the said Act and of the procedure and practice of this Honorable Court, the said Court or any Judge thereof may, from time to time, upon special cause shown, grant interlocutory orders,

affording relief to the Respondents in such cases as are referred to in said petition and affidavits should they occur. And the said Reverend Robert Dobie hereby declares his willingness to consent to the granting of any order which this Court or any Judge thereof may deem reasonable for the protection of the funds of said Board without prejudice to the pretensions of the said Robert Dobie, as set forth in his petition in this matter.

That as regards the stock held in the Merchants' Bank of Canada and the Consolidated Bank of Canada, the said Robert Dobie saith :

That the said Board have held the said bank stocks for several years, 10 during which time the stock has depreciated more than forty per cent., and yet the said Board have not thought it advisable to change the said investments, and that in fact, the said stock has risen in value since the second day of January last, and that the said stock in the Merchants' Bank of Canada is now worth seventy-nine and a half cents on the dollar, and the said stock in the Consolidated Bank of Canada is worth fifty cents on the dollar.

That the pretended danger of damages resulting from non-payment of stipends is altogether too remote and problematical, and that moreover the said Board will have a good legal justification for refusing to pay said stipends, to wit, having been forbidden to do so by the said writ of injunction, and that no action 20 could be maintained by any ministers for their stipends against said Board. And the said Reverend Robert Dobie hereby declares his willingness that such ministers as still belong to the "Presbyterian Church of Canada in connection with the Church of Scotland," and have not seceded from that Church may be paid their stipends (the whole without prejudice to the pretensions of said Reverend Robert Dobie as set forth in his petition), and as to the others the said Reverend Robert Dobie saith : there is a valid reason why they should not be paid.

Wherefore, the said Reverend Robert Dobie prays that the said petition may be hence dismissed with costs.

Montreal, 12th February, 1879.

MACMASTER, HALL & GREENSHIELDS.
Attorneys for Petitioner.

Canada,
Province of Quebec. }
District of Montreal, }

Superior Court.

The Reverend Robert Dobie - - - - - Petitioner.

vs.

"Board for the Management of the Temporalities Fund of
the Presbyterian Church of Canada in connection with
the Church of Scotland," *et al.*, - - - - - Respondents.

40 Robert M. Esdaile, of the city and district of Montreal, clerk, being duly sworn, doth depose and say :

That he knows of the corporation Respondents.

That he is credibly informed by the Reverend Gavin Lang, one of said Respondents, that said Board have held the bank stock, styled Merchants, and

RECORD.

In the
Superior
Court.

No. 12.
Answer to
Petition,
filed 12th
Feb'y 1879.
—continued.

No. 12A.
Affidavit of
Robert M.
Esdaile,
filed with
Answer to
Petition.

RECORD.

*In the
Superior
Court.*

No. 12A.
Affidavit of
Robert M.
Esdaile,
filed with
Answer to
Petition.—
continued.

those of the Consolidated Bank of Canada, in the affidavits of William Darling and James Croil, for upwards of five years and have never made any sale or transfer thereof.

That furthermore said Board, Respondents, held seven hundred and one shares of said Merchants' Bank stock on the thirty-first day of January, eighteen hundred and seventy-five, and the said Board hold now, according to the last statement of said Bank list of shareholders in the month of June, eighteen hundred and seventy-eight, four hundred and sixty-six shares, being about the same shares, owing to the capital stock and original value of the shares of said Bank having been reduced.

That said Board have held said Bank shares while the value thereof have declined over forty per cent. as regards the said Merchants' Bank, and over thirty per cent. as regards said Consolidated Bank at least, and as deponent verily believes, no transfer or sale of such stock or any portion thereof was ever made and proceeds reinvested.

That since the date of the affidavits of said Darling and Croil the value of said shares in the Merchants' Bank has increased, and on the first day of February last past, shares were sold in the city of Montreal, on the Stock Exchange, for seventy-six dollars and seventy-five cents per share, and yesterday said shares were worth seventy-nine dollars and fifty cents, and even during the said interval were of greater value.

And he hath signed.

R. M. ESDAILE.

Sworn and acknowledged before me at the city of Montreal, this twelfth day of February, eighteen hundred and seventy-nine.

W. H. E. SCOTT,
Commissioner for Superior Court, District of Montreal.

No. 12B.
Affidavit of
Curtis N.
D. Osgood,
filed with
Answer to
Petition.

Canada,
Province of Quebec. }
District of Montreal, }

Superior Court.

The Reverend Robert Dobie - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

Curtis N. D. Osgood, of the city and district of Montreal, broker, being duly sworn, doth depose and say :

I know of the Board Respondents. I am credibly informed that the said Board have held the bank stock and shares thereof referred to in the affidavits of Messrs. Darling and Croil, filed in this cause, for over four years without making any sale thereof.

That during said period the value of said shares have decreased over forty per cent. as to said Merchants' Bank stock, and over thirty per cent. as to said Consolidated Bank, up to the date of the issue of the injunction in this cause ; that as to said shares there have been a variation in value thereof of over forty per cent in both cases.

That since the first day of February instant, the value of shares in said Merchants' Bank have increased. RECORD.

That the value of the shares in the Consolidated Bank aforesaid are about the same as on the first of February instant, and during the interval were of a slightly greater value.

*In the
Superior
Court.*

And he hath signed.

C. N. D. OSGOOD.

No. 12B.
Affidavit of
Curtis N.
D. Osgood,
filed with
Answer to
Petition.—
continued.

Sworn and acknowledged before me, at the city of Montreal, this twelfth day of February, eighteen hundred and seventy-nine.

W. H. E. SCOTT,

Commissioner for Superior Court for district of Montreal.

(Received copies.)

Under reserve of all objections.

JOHN L. MORRIS,

Atty. for Respondents.

(Endorsed.)

Answer to Petition and Affidavits—Filed 12th February, 1879.

(Paraphed) G. H. K., Depy P.S.C.

Schedule No. 15.

Canada,
Province of Quebec, }
District of Montreal. }

Superior Court.

The Reverend Robert Dobie, - - - - - Petitioner.

vs.

"Board for the Management of the Presbyterian Church of
Canada in connection of Scotland" - - - - - Respondents.

The Petitioner prays *acte* of his willingness that the funds and stocks herein held by the Respondents and all interest accruing thereon, may be re-invested in other stocks or securities from time upon cause shown—after notice to him—
and upon the order of the Court or a Judge of the Superior Court for Lower Canada, district of Montreal: without prejudice to the writ of injunction herein—
and to the present suit.

Montreal, 14th February 1879.

MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioners.

(Endorsed.)

Consent of Petitioner to Reinvestment—Filed 14th February 1879.
(Paraphed) L. A. J. (Paraphed) G. H. K., Depy P.S.C.

No. 13.
Consent of
Petitioner
to reinvest-
ment, filed
14th Feby
1879.

RECORD.

Schedule No. 16.

*In the
Superior
Court.*
Canada,
Province of Quebec,
District of Montreal.

Superior Court.

No. 14.
Affidavit of
James Croil,
on part of
Respondents
filed 14th
Feby 1879.

The Reverend Robert Dobie, - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.* - - - - - Respondents.

James Croil, of the city and district of Montreal, being duly sworn, deposeth 10
and saith:

That for nine (9) years he was business agent of the Presbyterian Church
of Canada in connection with the Church of Scotland.

That the only ministers of the said Church entitled like the Petitioner to be
paid the sum of (\$450.00) four hundred and fifty dollars per annum as commu-
tators of the said fund, and who object to the union referred to in Petitioner's Peti-
tion, are six, including said Dobie, and they did on the fifteenth of June, eighteen
hundred and seventy-five, secede from said Church.

That all the other commutators surviving adhere to said Union, and have
approved of the present administration of said fund. 20

And I have signed,

JAMES CROIL.

Sworn and acknowledged before me, at the city of Montreal, this thirteenth
day of February, eighteen hundred and seventy-nine.

ANDREW F. SIMPSON,

A Commissioner for Superior Court, district of Montreal.

(Endorsed.)

Affidavit of James Croil, on part of Respondents—Filed 14th Feby, 1879.
(Paraphed) L. A. J. (Paraphed) G. H. K., Depy. P. S. C.

No. 15.
Affidavit of
Alex.
McGibbon,
filed 15th
Feby 1879.

Schedule No. 17.

Canada,
Province of Quebec,
District of Montreal,

Superior Court, Montreal.

No. 2100. The Reverend Robert Dobie, - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of
the Presbyterian Church of Canada in connection with
the Church of Scotland," *et al.*, - - - - - Respondents.

Alexander McGibbon, of the city and district of Montreal, being duly sworn,
doth depose and say: 40

I am a member of the Presbyterian Church of Canada in connection with
the Church of Scotland.

I know the Petitioner and the Respondent—I know that there are thousands of people throughout the Dominion of Canada who belong to the said Presbyterian Church of Canada in connection with the Church of Scotland—The number of their ministers is not large, but the present ministers dispense the ordinances of religion to the different Congregations, of which there are several throughout the country. Many of the most influential men and families throughout the Dominion of Canada belong to the said Presbyterian Church of Canada in connection with the Church of Scotland, among others Sir Hugh Allan and Joseph Hickson and many others.

RECORD.

*In the
Superior
Court.*

No. 15.
Affidavit of
Alex.
McGibbon,
filed 15th
Feby 1879.
—continued.

And I have signed.

AL. MCGIBBON.

Sworn and acknowledged before me, at the city of Montreal, this fifteenth day of February, eighteen hundred and seventy-nine.

L. A. HART.

A Commissioner Superior Court, district of Montreal.

(Endorsed.)

Affidavit of Alex. McGibbon—Filed 15th February, 1879.

(Paraphed) G. H. K., Depy., P.S.C.

Schedule No. 18.

20 Canada,
Province of Quebec, }
District of Montreal.

Superior Court, Montreal.

No. 16.
Affidavit of
Rev.
Gavin Lang,
filed 15th
Feby 1879.

No. 2100. The Reverend Robert Dobie, - - - - - Petitioner.
vs.

“Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland,” *et al.*, - - - - - Respondents.

Gavin Lang, of the city and district of Montreal, being duly sworn, doth depose and say :

30 I am a minister of the Presbyterian Church of Canada in connection with the Church of Scotland, and pastor and minister of St. Andrew's Church, Montreal. I know the Petitioner and the Respondents, and am a member of the Board Respondents, and am willing to abide the order and judgment of the Court herein.

The Petitioner is a minister of the Presbyterian Church of Canada in connection with the Church of Scotland, of which there are several throughout the old Province of Canada.

40 There are many thousands adherents of the said Church, and persons who worship under its ordinances. There are about thirty Congregations worshipping in connection therewith. The ministers at present in connection therewith endeavor to supply the ordinances of religion to the different Congregations as best they are able. At the time the vote in the said Church generally was taken in

RECORD. favor of Union, one hundred and thirty-four elders and ministers, out of a membership of Synod numbering two hundred and thirty-three, or thereabout, were not present and did not vote—The number of Ministers actively connected with the said Church is fifteen besides Catechists, and the said Church is in full organisation, and has Synods and Presbyteries for its government in regular working order, and, as mentioned above, has thousands of devoted adherents and members in all parts of the country.

In the
Superior
Court.

No. 16.
Affidavit of
Rev.
Gavin Lang,
filed 15th
Feby 1879.
—continued.

And I have signed,

GAVIN LANG.

Sworn and acknowledged before me at the city of Montreal, this fifteenth day 10
of February, eighteen hundred and seventy-nine.

THEO. DOUCET,
C. S. C., L. C., district of Montreal.

(Endorsed.)

Affidavit of Rev. Gavin Lang—Filed 15th February, 1879.
(Paraphed) G. H. K., Depy. P.S.C.

Schedule No. 19.

No. 17.
Notice to
Respondents
that addi-
tional secu-
rity will be
given, filed
28th Feby
1879.

Canada,
Province of Quebec, }
District of Montreal } Superior Court.

No. 2100. The Reverend Robert Dobie, - - - - - Petitioner.
vs.

“ Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland ” *et al.*, - - - - - Respondents.

To

John L. Morris, Esq., Attorney for said Respondents, excepting the Rev-
erend Gavin Lang and Sir Hugh Allan :

Sir,

You are hereby notified by the Petitioner, under reserve of his rights, that 30
over and above the security by him already given, he will give additional secu-
rity to the extent of three thousand five hundred dollars, under the terms of the
fourth section of the fourteenth chapter of the Statute of the Province of Que-
bec, passed in the forty-first year of Her Majesty's reign, for the costs and
damages the said Respondents may suffer by reason of the issue of the writ of
injunction herein, and as required by the judgment herein rendered on the nine-
teenth day of February instant, said security to be given to the satisfaction of one
of the Honorable Judges of the said Superior Court, sitting in chambers at the
Court House, in the city of Montreal, on the twenty-eighth day of February in-
stant, at half-past ten of the clock in the forenoon, and you are further notified 20

that the names of the persons who will be then and there offered to give security are Joseph Hickson, railway manager, and James S. Hunter, notary, both of the city and district of Montreal.

Montreal, 25th February, 1879.

MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioner.

(Endorsed.)

Notice—Filed 28th February, 1879.

(Paraphed) H. H. & G., P.S.C.

Schedule No. 19A,

Canada,
Province of Quebec, } Superior Court, Montreal.
District of Montreal.

No. 2100. Reverend Robert Dobie, - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

To

John L. Morris, Esq., Attorney for said Respondents, excepting the Reverend Gavin Lang and Sir Hugh Allan :

Sir,

Notice is hereby given you by Petitioner, under reserve of his rights, that in accordance with the judgment herein rendered on the nineteenth of February instant, he will give security for the costs that may be incurred by the said Respondents by reason of the action of the said Petitioner, apart from the costs and damages that may be incurred by the issuing of the writ of injunction herein, before the Prothonotary of the Superior Court, at the Court House, in the city of Montreal, on Friday, the twenty-eighth day of February instant, at half-past ten o'clock in the forenoon, and that the names of the persons who will then and there be offered as such sureties are George Graham, merchant, and William Currie, both of the city and district of Montreal, who will then and there justify to their sufficiency, if required.

Montreal, 25th February, 1879.

MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioner.

Duly received copy.

JOHN L. MORRIS,

Attorney for all Respondents,

Except Sir Hugh Allan and the Reverend Gavin Lang.

(Endorsed.)

Notice - Filed 28th February, 1879.

(Paraphed) H. H. & G., P.S.C.

RECORD.

In the
Superior
Court.

No. 17.

Notice to
Respondents
that additional security will be given, filed 28th Feby 1879.—
continued.

No. 18.

Notice that security for costs will be given, filed 28th Feby 1879.

RECORD.

In the
Superior
Court.

Canada,
Province of Quebec, }
District of Montreal.

Schedule No. 20.

Superior Court, Montreal.

No. 19.

Notice that
security for
costs has
been entered
filed 28th
Feb'y 1879.

No. 2100. The Reverend Robert Dobie, - - - - - Petitioner.

vs.

"Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

To

John L. Morris, Esquire, Attorney for said Respondents, excepting Sir Hugh
Allan and the Reverend Gavin Lang :

Sir,

You are hereby notified that security has been duly given this day by the
Petitioner for the costs that the said Respondents may incur by reason of his
present action.

Montreal, 28th February, 1879.

MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioner.

Duly received copy and notice.

JOHN L. MORRIS,

Attorney for said Respondents,

Except Reverend G. Lang and Sir H. Allan.

(Endorsed.)

Notice that security for costs has been entered Filed 28th February, 1879.
(Paraphed) H. H. & G., P.S.C.

Schedule No. 21.

No. 19A.

Notice that
additional
security has
been put in
by Petition-
er, filed 28th
Feb'y 1879.

Canada,
Province of Quebec, }
District of Montreal.

Superior Court, Montreal.

The Rev. Robert Dobie, - - - - - Petitioner.

vs.

"Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland" *et al.*, - - - - - Respondents.

To

John L. Morris, Esquire, Attorney for said Respondents, excepting Sir
Hugh Allan and the Reverend Gavin Lang.

Sir,

You are hereby notified that security was this day duly entered as required
by the judgment of the Superior Court, of the tenth of February instant, requir-

10

20

30

40

ing additional security for the costs and damages that may occur to Respondents by reason of the issue of the writ of injunction herein, to the amount of three thousand five hundred dollars additional.

Montreal, 28th February, 1879.

MACMASTER, HALL & GREENSHIELDS,
Attys. for Petitioner.

(Duly received copy and notice.)

JOHN L. MORRIS.

Attorney for Respondents,

Except Rev. G. Lang and Sir Hugh Allan.

(Endorsed.)

Notice that additional security has been put in by Petitioner—Filed 28th February, 1879.

(Paraphed) H. H. & G., P.S.C.

RECORD.

In the
Superior
Court.

No. 19A.
Notice that
additional
security has
been put in
by Petitioner,
filed 28th
Feb'y 1879.
—continued.

Schedule No. 22.

Canada,
Province of Quebec, }
District of Montreal.

Superior Court.

The Rev. Robert Dobie - - - - - Petitioner.

vs.

"Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

To the Honorable the Superior Court for Lower Canada, district of Montreal, or
to any one of the Honorable Justices of the said Court in and for the district
of Montreal.

The petition of the Respondents, without waiver of their right to plead
to the merits or otherwise in this matter, but on the contrary, reserving to
themselves all their rights. Respectfully sheweth :

30 That the said Dobie is not and never was a minister of the Church of Scotland,
as untruly alleged by him in his said petition.

That the petition in this matter made by the Reverend Robert Dobie, and
the affidavits in support thereof, upon which the writ and order issued herein, do
no contain a true statement of the facts.

That the original capital sum obtained by the Synod of the Presbyterian
Church of Canada in connection with the Church of Scotland from the commu-
tation of the Clergy Reserves money was (£127,448 5s. 0d.) one hundred and
twenty-seven thousand four hundred and forty-eight pounds five shillings.

40 That only eighty-four ministers, including the Petitioner Dobie, had claims
upon it.

No. 20.
Petition of
Respondents
that order
for Writ of
Injunction
&c. be dis-
solved or
suspended,
filed 3rd
March 1879.

RECORD.

*In the
Superior
Court.*

No. 20.
Petition of
Respondents
that order
for Writ of
Injunction
&c. be dis-
solved or
suspended,
filed 3rd
March 1879.
—continued.

That it was about the year eighteen hundred and fifty-six, agreed by all of said ministers and by said Synod, that the claims of all ministers on said fund should at their death revert to said Synod, and said Synod has always since up to the 15th of June, eighteen hundred and seventy-five, with the consent of said Dobie, controlled and administered said fund through the said Board.

That the sole interest which said Dobie had or has in said original fund is that he should be paid during his life (£112 10s. 0d.) one hundred and twelve pounds ten shillings per annum.

That of the original eighty-four ministers who had claims on said original fund only thirty-three remain, and of these twenty-seven have agreed and con- 10
sented to the present disposition and administration of said fund, to wit, that said Synod by resolution authorized the present disposition of the fund and the obtaining of the legislation which has been obtained with reference to said fund.

That the said Board are now acting under the authority of an Act passed by the Legislature of the Province of Quebec, (38) thirty-eighth Victoria, chapter (64) sixty-four, assented to on the twenty-third of February, eighteen hundred and seventy-five, intituled "An Act to amend the Act intituled An Act to incorpor-
ate the Board for the Management of the Temporalities Fund of the Presby-
terian Church of Canada in connection with the Church of Scotland," and under the authority of an Act passed by the Legislature of the Province of Quebec, thirty- 20
eighth Victoria, chapter seventy-two, assented to on the twenty-third day of February, eighteen hundred and seventy-five, intituled "An Act respecting the
"union of certain Presbyterian Churches therein named," and also under the authority of an Act passed by the Legislature of the Province of Ontario, thirty-
eighth Victoria, chapter seventy-five.

That the said Synod obtained the passing of said Acts.

That the said Board and the members thereof are and have been acting legally under the authority of said Acts, and the members thereof are entitled to be and remain as such members under the authority of said Acts.

That the said Board have not infringed upon the capital of said fund as to 30
endanger the personal interest of said Dobie, which capitalised would amount to less than (\$6,500.00) six thousand five hundred dollars, but on the contrary, the said Board have always set forth their purpose, and now repeat their resolve that no consideration or circumstances shall at any time induce them so to administer the fund as to imperil the interests of said Petitioner, or for that matter, of any other surviving commuting minister, as said Dobie well knows.

That under the authority of said Acts the said Dobie and all others having a claim to stipends are secured and guaranteed in the enjoyment of the same, and said Dobie and all others have regularly received their stipends.

That the effect of said Dobie's writ of injunction, if allowed to remain in 40
force, is simply to deprive all the ministers having claims upon said fund, of their half-yearly stipend, which makes a large part in some cases, and in other cases the whole of their incomes.

That great injury and suffering to many families will be the result.

That it is untrue that the Reverend John Cook, the Reverend James C. Muir, and the Reverend George Bell seceded from the Presbyterian Church of Canada in connection with the Church of Scotland.

That the said Church on the fifteenth of June, eighteen hundred and seventy-five, legally, and by the authority of its Synod and of the said Acts above cited, joined to itself and united with certain other Presbyterian Churches, changing its name to the Presbyterian Church in Canada, and declaring that it retained its identity, and retaining all its property, rights and privileges under the name of the Presbyterian Church in Canada, leaving out the words in connection with the Church of Scotland, and under the authority of said Acts.

That the words "in connection with the Church of Scotland," in the name formerly used by said Church have always had the signification, and no other signification, than that given to them by the Declaratory Act of the Synod of said Church, passed and adopted by them in the month of September, eighteen hundred and forty-four, said Synod being the Supreme Court and highest authority in said Church, and declaring that said Synod had always possessed, and then possessed, and exercised a perfectly free, full, final, supreme and uncontrolled power of jurisdiction, discipline and judgment over said Church, and over all congregations and ministers in connection therewith, without the right of review, appeal, or complaint or reference to any other Court, and that the words in connection with the Church of Scotland implied no right of jurisdiction or control in any form whatsoever by the said Church of Scotland, over said Synod, but denoted merely the connection of origin and identity of standards.

That said supreme and free jurisdiction was a fundamental and essential part of the constitution of the said Synod, and all ministers and probationers for ordination or into any pastoral charge were required to give their assent thereto, as did the said Petitioner.

That in fact on the said fifteenth of June, eighteen hundred and seventy-five, the said Dobie seceded from said Presbyterian Church of Canada in connection with said Church of Scotland, and lost all claim to any benefits from said fund, and only has a right to claim upon said fund by the generosity of the Synod of said last mentioned Church which caused the said Acts to be passed previous to said union and change of name, one of the provisions of which is that all ministers who chose not to remain in the Church after said union should nevertheless be entitled to be paid their usual stipend.

That said Dobie has since frequently recognized the validity of the constitution of said Board and of said Acts by accepting from said Board, as at present constituted, his half yearly stipend of (\$225.00) two hundred and twenty-five dollars from said fund, and has also without protest or taking any proceedings until last May, allowed said Board since said fifteenth of June, eighteen hundred and seventy-five, to act and administer said fund as they are now administering it.

That his present proceeding of taking an *ex parte* injunction without notice to Respondents, and upon a misrepresentation of facts, is malicious and wholly unwarranted as intended to deprive twenty-five other brother ministers who, with him, from the beginning have enjoyed an equal right and share in the fund, and to several of whom (for example the Reverend John Cook, D.D.,

RECORD.

*In the
Superior
Court.*

No. 20.
Petition of
Respondents
that order
for Writ of
Injunction
&c. be dis-
solved or
suspended,
filed 3rd
March 1879.
—continued.

RECORD. of Quebec,) that is to say, to their energy, wisdom and self-devotion, the fund is largely indebted for its present favorable condition as the said Dobie very well knows.

*In the
Superior
Court.*

No. 20.
Petition of
Respondents
that order
for Writ of
Injunction
&c. be dis-
solved or
suspended,
filed 3rd
March 1879.
—continued.

That the said writ, petition and order, purport to have been issued and have been in fact issued under the provisions of the Statute of this Province, passed in the forty-first year of Her Majesty's reign, and intituled "An Act to provide for the issue of the writ of injunction in certain cases, and to regulate the procedure in relation thereto."

That in and by the eighth section of said Act, sub-section two, it is provided that any injunction may from time to time be suspended as the Court or Judge 10 may deem necessary.

Wherefore the said Respondents pray that the order of His Honor Mr. Justice Jetté given in this matter, and the order contained in the said writ on the thirty-first of December last, may be dissolved, or at the very least suspended, the whole with costs *distracts* to the undersigned.

Montreal, 28th January, 1879.

JOHN L. MORRIS,

Attorney for Respondents,

Excepting the Reverend Gavin Lang and Sir Hugh Allan.

TO MESSRS. MACMASTER HALL & GREENSHIELDS,
Attorneys for Petitioner.

20

Sirs,

Take notice of the foregoing Petition and affidavits annexed, and that the same will be presented for allowance to the said Superior Court, third division, sitting in the Court House, in the city of Montreal, or to one of the Judges of the said Superior Court, in the Practice Court, in the city of Montreal, on Monday, the third day of March next, at eleven of the clock in the forenoon.

Montreal, 28th February, 1879.

JOHN L. MORRIS,

Attorney for Respondents,

Excepting the Reverend Gavin Lang and Sir Hugh Allan.

30

(Endorsed.)

Petition and Notice—Filed 3rd March, 1879.

(Paraphed) G. H. K., Depy. P.S.C.

(Ten days to answer.)

L. H. C., Dep. P.S.C.

Canada,
Province of Quebec,
District of Montreal.

Superior Court.

The Rev. Robert Dobie, - - - - - Petitioner.

vs.

"Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

RECORD.

In the
Superior
Court.

No. 20A,
Affidavit of
the Revd.
John Hugh
Mackerras,
filed with
Petition for
the dissolution
or sus-
pension of
order for
Writ of
Injunction.

I, John Hugh Mackerras, of the city of Kingston, in the province of
Ontario, professor of classical literature in Queen's College, at Kingston afore-
said, being duly sworn, depose and say:

1. I was ordained a minister of the Presbyterian Church of Canada in connec-
tion with the Church of Scotland, in the year eighteen hundred and fifty-three,
and I remained a minister of the said Church from that time until the said Church
in the year one thousand eight hundred and seventy-five, joined to itself and
united with the other Presbyterian Churches of Canada, at the same time chang-
ing its name to that of the Presbyterian Church in Canada, and since that time I
have remained and still am a minister of said Church.

2. I am one of the original commuting ministers of the Presbyterian
Church of Canada in connection with the Church of Scotland, who commuted
my claim upon the funds arising from the Clergy Reserves as mentioned in the
petition of the said Robert Dobie, and I have a personal knowledge of the pro-
ceedings connected with the renunciation of rights of ministers of the Clergy
Reserves Fund to and in favor of the Presbyterian Church of Canada in connec-
tion with the Church of Scotland.

3. The said commutation was negotiated and carried out by His Excel-
lency the Governor General of Canada in Council, on the one part, and commis-
sioners appointed by the said Synod to represent them on the other part, and in the
treaty respecting the said commutation it was distinctly stipulated and agreed
between the parties that the said commutation should be negotiated and carried
out with the Synod of the said Church as a body and not with individual minis-
ters of the said Church, and His Excellency the Governor in Council declined
to make commutation with individual ministers of the said Church, although
in two cases he was petitioned so to do.

4. The amount received by the Synod of the said Church as and for the
said commutation allowance was one hundred and twenty-seven thousand three
hundred and twenty-seven pounds, sixteen shillings and four pence.

The number of ministers who then had claims upon the said fund was
eighty-four, and it was then agreed by the members of the said Synod that the
said sum of money should be and it was funded for the benefit of the said
Church, and that the only right and interest therein of each of the said minis-
ters should be to receive a certain annuity therefrom during his lifetime, and
that subject to such right, the said fund should be and remain a common fund for
the use and under the control of the said Church.

5. Subsequently in the years one thousand eight hundred and fifty-seven
and one thousand eight hundred and fifty-eight, the said Synod caused proceed-

RECORD.

*In the
Superior
Court.*

No. 20A.
Affidavit of
the Revd.
John Hugh
Mackerras,
filed with
Petition for
the dissolution
or suspension
of order for
Writ of
Injunction.

—continued.

ings to be taken, whereby the Statute of the late Province of Canada, twenty-two Victoria, chapter sixty-six, was passed for the management of the said fund, and ever since that time "The Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," constituted by the said statute, have with the consent and approval of the said Synod controlled and administered the said fund.

6. The said Dobie continued to be a member of the said Synod up to the fifteenth day of June, one thousand eight hundred and seventy-five, and up to that date he had always as a member of the said Synod assented to and acquiesced in the management of the said fund by the said Board.

7. From the year one thousand eight hundred and sixty-five to the year one thousand eight hundred and seventy-five, I was clerk of the Synod, which was the Supreme Court of the Presbyterian Church of Canada in connection with the Church of Scotland, and, as such clerk, I had the custody of all the most important records and proceedings of the said Church, and it was my duty, as such clerk, to make and preserve a record of all the acts and proceedings of the said Synod, and to be familiar with the laws, rules and proceedings of the said Church.

8. From the month of November in the year one thousand eight hundred and sixty-seven up to the present time, I have been and still am a member of the Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland.

9. From the year one thousand eight hundred and seventy to one thousand eight hundred and seventy-five, negotiations for union were carried on between the Presbyterian Church of Canada in connection with the Church of Scotland, the Canada Presbyterian Church, the Presbyterian Church of the Lower Provinces, and the Presbyterian Church of the Maritime Provinces in connection with the Church of Scotland, which resulted in the union effected in the year one thousand eight hundred and seventy-five, as herein-after mentioned, and an Act was passed by the Legislature of the Province of Quebec, upon petition from the said Synod, being thirty-eight Victoria, chapter sixty-four, and upon a like petition the Act of the Province of Ontario, where the said Petitioner, the Reverend Robert Dobie, resides, being thirty-eight Victoria, chapter twenty-five, was also passed, whereby the rights of all ministers entitled to any interest in or claim upon the said fund were guaranteed to them whether they remained with the said Church in said union or not.

10. That the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, at a meeting held in the city of Montreal on the fourteenth day of June, one thousand eight hundred and seventy-five, duly called and constituted according to the law and practice of the said Church, after due notice and consideration and in pursuance of negotiations which had extended over a period of five years, resolved and agreed to join to itself and become united with certain other Presbyterian Churches, to wit, the Canada Presbyterian Church, the Presbyterian Church of the Lower Provinces, and the Presbyterian Church of the Maritime Provinces in connection with the Church of Scotland.

11. In pursuance of the said resolution and agreement the said Synod and the said Presbyterian Church of Canada in connection with the Church of

Scotland represented by and acting through the said Synod, its supreme and highest court, whose decision was the decision of the said Church, and bound all the members thereof by all rules of Presbyterian polity and procedure, unless any dissenting member chose to secede from it as did said Dobie, on said fifteenth of June, eighteen hundred and seventy-five, joined to itself and united with the said other Presbyterian Churches, it being at the same time declared, agreed and understood that the united Church, so formed, should be considered identical with the Presbyterian Church of Canada in connection with the Church of Scotland, and should possess the same privileges, rights and benefits to which this last-mentioned Church was then entitled, as appears by the formal resolution of said Synod and Act of Union contained upon pages thirty-five and forty-one of the certified copy of the minutes of said Synod, at its session in June, eighteen hundred and seventy-five, which I herewith annex and certify to be a correct copy of the original written record and minutes of said Synod, which I kept as its duly appointed clerk.

12. The only ministers of said Church, besides the said Reverend Robert Dobie, at said session of Synod in June, eighteen hundred and seventy-five, who refused to act with the said Church and Synod in effecting such union, and who thereupon seceded from the said Synod and from the Presbyterian Church of Canada in connection with the Church of Scotland, were the Reverend William Simpson, the Reverend Robert Burnet, the Reverend David Watson, the Reverend John Davidson, the Reverend Thomas McPherson, and the Reverend John McDonald.

13. The rights of the said Dobie and other commuting ministers are fully protected and guaranteed by the said legislation and by the acts and proceedings of the Synod and the said Temporalities Board, and it was and is the intention of the legislation, acts and proceedings aforesaid, fully to protect, preserve and guarantee such rights.

14. The capital necessary to secure those rights has not been trespassed upon by the said Board, nor is there any intention on the part of the said Board to trench upon it.

15. In the year one thousand eight hundred and forty-four the Church of Scotland, through the Colonial Committee of the General Assembly of the said Church, recognised the absolute independence of the Presbyterian Church of Canada in connection with the Church of Scotland, and disclaimed the right to exercise any authority or control over the last-mentioned Church, and declared that she had never possessed nor desired to possess any such right.

16. That the words "in connection with the Church of Scotland," in the name formerly used by said Church have always had the signification, and no other signification, than that given to them by the Declaratory Act of the Synod of said Church, passed and adopted by them in the month of September, eighteen hundred and forty-four, said Synod being the Supreme Court and highest authority in said Church, and declaring that said Synod had always possessed, and then possessed and exercised, a perfectly free full final supreme and uncontrolled power of jurisdiction, discipline and judgment over said Church and over all congregations and ministers in connection therewith, without the right of review, appeal or complaint, or reference by or to any other Court, and that the

RECORD.

*In the
Superior
Court.*

No. 20A.
Affidavit of
the Revd.
John Hugh
Mackenzie,
filed with
Petition for
the dissolution
or suspension of
order for
Writ of
Injunction.
—continued.

RECORD. words in connection with the Church of Scotland implied no right of jurisdiction or control in any form whatsoever by the said Church of Scotland over said Synod, but denoted merely the connection of origin and identity of standards, and ministerial and Church communion.

*In the
Superior
Court.*

No. 20A.
Affidavit of
the Revd.
John Hugh
Mackerras,
filed with
Petition for
the dissolution
or suspension of
order for
Writ of
Injunction.
—continued.

17. That said supreme and free jurisdiction was a fundamental and essential part of the constitution of the said Synod, and all ministers and probationers for ordination or induction into any pastoral charge were required to give their assent thereto, as did the said Petitioner.

And I have signed.

J. H. MACKERRAS.

10

Sworn to and acknowledged before me, at the city of Kingston, in the Province of Ontario, this 3rd day of February, eighteen hundred and seventy-nine.

J. N. HENDERSON,

A Commissioner for taking affidavits in the Province of Ontario, to be used in the Province of Quebec.

(Endorsed.)

Affidavit of the Reverend John Hugh Mackerras.

Annexed to the affidavit of the Reverend John Hugh Mackerras are the following extracts:

No. 20B.
Extracts
from the
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland.
Session xlix.
Begun at
Montreal,
8th June,
1875.
Annexed to
the Affidavit
of the Revd.
John Hugh
Mackerras.

THE

20

ACTS AND PROCEEDINGS

OF

THE SYNOD

OF THE

PRESBYTERIAN CHURCH OF CANADA IN CONNECTION WITH THE CHURCH OF SCOTLAND.

SESSION XLIX.

Begun at Montreal, 8th June,
1875.



Kingston :
Printed by William Bailie,
1875.

30

MINUTES OF SYNOD, MONTREAL, JUNE 14TH, 1875.

EXTRACT.

Arrangements for Consummation of Union.

Mr. Campbell (Montreal) submitted a report from the Joint-Committee on arrangements for the consummation of Union. After due deliberation on the matters embraced in said report, it was moved by Mr. Romaine, and seconded by Mr. James C. Smith, That the Synod adopt the report and find in terms of the following Minute, viz.:

The Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, at its meeting, in the month of November last year, having, after taking the necessary constitutional means for ascertaining the mind of the Church on the subject, resolved to unite with the Canada Presbyterian Church, the Presbyterian Church of the Lower Provinces, and the Presbyterian Church of the Maritime Provinces in connection with the Church of Scotland, on the ground of the articles of Union agreed upon by the Supreme Courts of the negotiating Churches; and having, by the help of God, completed all preliminary arrangements, does now whilst recounting with fervent gratitude all the goodness and mercy vouchsafed to this Church in the past, humbly trusting that the Divine sanction will be given to the solemn and important step about to be taken, and earnestly praying that the Holy Spirit in all His quickening and sanctifying influences may descend largely on the United Church—Resolve, and hereby does record its resolution, to repair on the adjournment of the Court to-morrow morning to the Victoria Hall (commonly known as the Victoria Skating Rink), the appointed place of meeting, for the purpose of consummating the Union with the aforesaid Churches, and of forming one General Assembly, to be designated and known as The General Assembly of the Presbyterian Church in Canada, and does at the same time declare that the United Church shall be considered identical with the Presbyterian Church of Canada in connection with the Church of Scotland, and shall possess the same authority, rights, privileges and benefits to which this Church is now entitled, excepting such as have been reserved by Acts of Parliament. And further, with the view of ratifying the Act of Union, the Synod does empower its Moderator to sign in its name the preamble and basis of union, and also the resolutions adopted in connection therewith.

To this it was moved in amendment by Mr. Carmichael (Markham), and seconded by Mr. W. R. Ross, That after the word "authority" towards the close of the above motion or proposed minute, the following be inserted:—And that the ministers, congregations, theological and literary institutions embraced in the Acts relating to the Union of the Presbyterian Churches in the Dominion of Canada, entering into the said United Church from the Presbyterian Church of Canada in connection with the Church of Scotland, shall enjoy the rights, privileges and benefits to which they are now entitled.

A vote having been taken, the motion was carried over the amendment by an overwhelming majority, and the Moderator declared accordingly. From this decision Mr. Dobie and others dissented and craved the following to be entered in the minutes, viz.:

RECORD.

*In the
Superior
Court.*

No. 20th.
Extracts
from the
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland.
Session xlix.
Begun at
Montreal,
8th June,
1875.
Annexed to
the Affidavit
of the Revd.
John Hugh
Mackerras.
—continued.

RECORD.

*In the
Superior
Court*

No. 20B.
Extracts
from the
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland.
Session xlix.
Begun at
Montreal,
8th June,
1875.

Annexed to
the Affidavit
of the Revd.
John Hugh
Mackerras.
—continued.

"We, ministers and elders, members of this Synod, heartily attached to the Church, hereby dissent from the resolution of this Court to repair to the Victoria Hall for the purpose of consummating the proposed Union with the other Presbyterian Bodies and thereby to form the General Assembly of the Presbyterian Church in Canada. We further protest against the declaration that the United Church shall be considered identical with the Presbyterian Church of Canada in connection with the Church of Scotland, inasmuch as this Synod has no power *per saltum*, to declare other Bodies in addition to itself to be possessed of the rights, privileges and benefits to which this Church is now entitled. We declare, therefore, our continued attachment to the Presbyterian Church of Canada in connection with the Church of Scotland and do hereby enter our protest against the empowering of the present Moderator to sign in its name the preamble and basis of Union and the resolutions connected therewith. And, further, we, ministers and elders of this Synod, holding views opposed to Union on the present basis, do protest against the carrying out of the contemplated arrangements for the consummation of the proposed Union, and declare that, if consummated, we will claim and continue to be the Presbyterian Church of Canada in connection with the Church of Scotland."

(Signed)

ROBERT DOBIE,
WM. SIMPSON,
ROBERT BURNET,
DAV. WATSON,
J. S. MULLAN,
WM. McMILLAN,
THOMAS MCPHERSON,
RODERICK MCCRIMMON.
JOHN DAVIDSON,
JOHN MACDONALD.

20

MINUTES OF SYNOD, MONTREAL, JUNE 15TH, 1875.

EXTRACT.

30

At Montreal, and within Victoria Hall, there, Tuesday, the fifteenth day of June, one thousand eight hundred and seventy-five years, at ten minutes before eleven o'clock in the forenoon:

Which day and hour the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland met pursuant to adjournment, and was constituted with prayer.

When the members composing the General Assembly of the Canada Presbyterian Church, the Synod of the Presbyterian Church of the Maritime Provinces in connection with the Church of Scotland, and the Synod of the Presbyterian Church of the Lower Provinces, had also convened in this place, devotional services were conducted by the Moderator of this Court, Principal Caven, D.D., Moderator of the General Assembly of the Canada Presbyterian Church, and the Rev. J. M. Grant, M.A., Moderator of the Synod of the Presbyterian Church of the Maritime Provinces in connection with the Church of Scotland.

30 sv

cu
an
th
se
S
av
ti
Ch
40 au

The minute, adopted at Monday's diet, agreeing to the consummation of Union, and instructing the Moderator to sign the Articles of Union, was read by the clerk.

The preamble, basis and accompanying resolutions which form the Articles of Union were signed by the Moderator, the members of Synod signifying their assent by standing up while the Moderator appended his signature.

Thereafter the Moderator presiding for the occasion, with the consent and concurrence of the other Moderators, the Rev. P. J. McGregor, Moderator of the Synod of the Presbyterian Church of the Lower Provinces, declared the Churches named in the aforesaid minute to be now united in one Church represented by this its first General Assembly, to be designated and known as

The
GENERAL ASSEMBLY
of the
PRESBYTERIAN CHURCH IN CANADA.

(On the back.)

I certify this to be a correct copy of the written Record,

J. H. MACKERRAS,

Clerk, Synod.

Kingston, February 3rd, 1879.

Canada,
Province of Quebec, } Superior Court.
District of Montreal,

The Reverend Robert Dobie, - - - - - Petitioner.
vs.

"Board for the Management of the Temporalities Fund of
the Presbyterian Church of Canada in connection with
the Church of Scotland," *et al.*, - - - Respondents.

I, James S. Mullan, of Osnaburck, in the Province of Ontario, being duly sworn, depose and say:

That I was ordained a minister of the Presbyterian Church of Canada in connection with the Church of Scotland, in the year (1861) eighteen hundred and sixty-one, and continued to act as such, and to be a member of the Synod of the said Church up to the (15th) fifteenth of June, eighteen hundred and seventy-five, when the said Church, acting by the authority of and through its Synod, joined to itself and united with the other Presbyterian Churches of Canada, and changing its name to the Presbyterian Church in Canada, at the same time declaring by its formal resolution and act of union, that the said united Church should be considered identical with the said Presbyterian Church of Canada in connection with the Church of Scotland, and should possess the same

RECORD.

In the
Superior
Court.

No. 20B.
Extracts
from the
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland.
Session xlix.
Begun at
Montreal,
8th June,
1875.
Annexed to
the Affidavit
of the Revd.
John Hugh
Mackerras.
—continued.

No. 20c.
Affidavit of
Rev. James
S. Mullan
filed with
Petition for
the dissolu-
tion or sus-
pension of
order for
Writ of
Injunction.

RECORD. authority, rights, privileges and benefits to which the said Presbyterian Church of Canada in connection with the Church of Scotland was then entitled.

*In the
Superior
Court.*

No. 20c.
Affidavit of
Rev. James
S. Mullan
filed with
Petition for
the dissolution
or suspension
of order for
Writ of
Injunction.
—continued.

That I was one of ten members of the said Synod who, on the fourteenth of June, eight hundred and seventy-five, dissented from the resolution of the said Synod, then carried by a large majority of said Synod, to repair upon the next day, to wit, the said fifteenth of June to the Victoria Hall for the purpose of consummating the said union.

That on the said fifteenth of June, eighteen hundred and seventy-five, following up the said resolution, the said Synod duly met and again adjourned to meet in the said Victoria Hall, Montreal, ten minutes before eleven o'clock in the fore- 10 noon of said day.

That I, along with the said the Rev. Robert Dobie, the Rev. William Simpson, the Rev. Robert Burnet, the Rev. David Watson, the Rev. Thomas McPherson, the Rev. John Davidson, and the Rev. John McDonald, ministers, of said Church and members of said Synod, along with two elders members of said Synod, to wit, William McMillan and Roderick McCrimmon, remained behind in Saint Paul's Church, Montreal, where said Synod had previously held its meeting, and did not go with the rest of the members of said Synod to said Victoria Hall to consummate the said union.

That immediately after the rest of the members of said Synod had so left 20 Saint Paul's Church, the said persons above-named, who remained behind attempted to form themselves into a Synod, and upon motion elected the said Rev. Robert Dodie, moderator, and the said Rev. Robert Burnet, clerk, of said pretended Synod.

That thereupon I protested to the said Reverend Robert Dobie that the whole matter was illegal upon several grounds.

Thereupon I left Saint Paul's Church, and repaired to the said Victoria Hall, and found the said legal Synod of the Presbyterian Church of Canada in connection with the Church of Scotland still in session, not having yet consummated the said union, and after I arrived at said Victoria Hall, the said Synod was 30 occupied for some time in calling over the names of its members from its roll, and I reached there in time to answer to my name, which I heard called out by the clerk of said Synod, and I gave my assent to said union,

And I have signed.

J. S. MULLAN.

Sworn to and acknowledged before me, at the city of Montreal, in the Province of Quebec, this thirty-first day of January, eighteen hundred and seventy-nine.

ANDREW J. SIMPSON,
A Commissioner, Superior Court, District of Montreal. 40

(Endorsed.)

Affidavit of the Reverend James S. Mullan.

Canada,
Province of Quebec, }
District of Montreal.

Superior Court.

The Reverend Robert Dobie, - - - - - Petitioner.

vs.

"Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

RECORD.

*In the
Superior
Court.*

No. 20d.
Affidavit of
the Rev.
John Cook,
D. D.,
filed with
Petition for
the dissolution
or suspension
of order for
Writ of
Injunction.

John Cook, Doctor of Divinity, now residing in the city of Quebec, being
10 duly sworn, deposeth and saith:

I am now and have been for upwards of forty-two years, minister of St.
Andrew's Church, in the said city of Quebec, having been ordained a minister of
the Church of Scotland and admitted to the charge of St. Andrew's Church, afore-
said, by the Presbytery of Dumbarton, in Scotland, in December, eighteen hun-
dred and thirty-five.

That on my arrival in Canada in the following year I was received as a
member of the Presbytery of Quebec, and of the Synod of the Presbyterian
Church of Canada in connection with the Church of Scotland, of which body I
was two several times moderator.

20 That in the year eighteen hundred and fifty-five I was appointed Convener
of the Committee of said Synod, charged with the duty of negotiating with the
Government of Canada a commutation of the salaries or allowances of ministers
chargeable for life, or during their incumbency, on the Clergy Reserve Fund, and
in that capacity received Powers of Attorney from individual ministers to act for
them, and was authorised by said Synod to give the sanction of the Church to
the commutation which was actually effected.

That the Act of the heretofore Parliament of Canada, twenty second Victoria,
chapter sixty-six, was obtained at the instance of the Synod, to incorporate a Board
for the management of the said Fund, to wit, the Board Respondents, of which
30 Board I then became and have ever since been a member.

That to the best of my belief the two allegations on which the petition of the
Reverend Robert Dobie proceeds, to wit, that on the fifteenth day of June, eigh-
teen hundred and seventy-five I and others named in said petition seceded from
the said Presbyterian Church of Canada in connection with the Church of Scot-
land, and ceased to be members thereof, and that he the said Dobie is now a member
of the Presbyterian Church of Canada in connection with the Church of Scotland,
plainly implying that he deems the small minority which on the said last men-
tioned day separated themselves from their brethren, and still are, the true
Presbyterian Church of Canada in connection with the Church of Scotland, are
40 both the one and the other without foundation, and, as I believe, likely to mislead
the Court. Forasmuch as it consists with my certain knowledge that the
Presbyterian Church aforesaid was from its commencement an independent body,
admitted to be so in a letter from the Colonial Committee of the Church of Scot-
land addressed, in the year eighteen hundred and forty-four, to the moderator
and members of the Presbyterian Church aforesaid, which expressly states that
"The Church of Scotland has never claimed any authority, nor exercised any

RECORD.

*In the
Superior
Court.*

No. 20d.
Affidavit of
the Rev.
John Cook,
D.D., filed
with Peti-
tion for the
dissolution
or suspen-
sion of order
for Writ of
Injunction.
—continued.

control over your Synod, neither has she ever possessed, nor desired to possess, the right of any such interference," and forasmuch also as by the same Synod to which the foregoing letter was addressed, to wit, in eighteen hundred and forty-four, was passed an Act declaring the independence of the said Church in the terms stated and set forth in the petition of Mr. John L. Morris, Respondents' Attorney for suspension of the writ of injunction in this matter, and to which Act the said Dobie gave his assent at the time of his ordination.

That as a result of such declared and admitted independence, as I fully believe and now declare it was in conformity with Presbyterian polity, that the Synod or Supreme Court of said Church should act with perfect freedom, and as its own views of duty might dictate in the matter of Union with other Presbyterian bodies; and that, by an overwhelming majority, it did, after long deliberation and much pains taken to ascertain the feelings thereamong of the great body of the Congregations and members of the said Church, finally resolve to enter into such Union, it being a condition thereof, and stated expressly in the Formal Act of Union that the united Church should be considered "identical with the Presbyterian Church of Canada in connection with the Church of Scotland, and should possess the same authority, rights, privileges, and benefits to which that Church is now entitled." And also that the said Synod obtained the Acts of the Provincial Legislatures of Quebec and Ontario as set forth and cited in the aforesaid petition of Respondents' Attorney.

In going into the said Union I did honestly believe, and do still believe, that I continued to adhere to the said Presbyterian Church of Canada in connection with the Church of Scotland, yielding due submission to those rules of ecclesiastical procedure by which the Synod, in common with all other Presbyterian bodies, had been, and still are, wont to be governed; and such I do believe to have been the persuasion and conviction of the great majority of the Synod, and in particular of the commuting ministers belonging thereto.

It was competent for the small minority of the Synod to organize themselves according to their pleasure, and to assume such designation as suited them; but in no sense could they assume to be the body whose authority they ceased to acknowledge and from which they seceded.

The petitioner Dobie assumes that in any such Union as was effected the Synod must necessarily cease to have that connection with the Church of Scotland which previously subsisted. But that connection, consisting, as has been shown, simply in origin in identity of standards and in ministerial and Church communion, has not ceased. The same standards are still recognized, and there is the same ministerial and Church communion. The united Church receives members and ministers of the Church of Scotland, and the Church of Scotland receives members and ministers who formerly belonged to the said Synod and who went into the Union, in the same way and to the same extent as it did before the Union, witness the reception of the Reverend William Black, late of the city of Montreal, and of the Reverend Dr. Snodgrass by Presbyteries of said Church of Scotland, as ministers of parishes in the said Church, the reception of the latter, namely, the Reverend Dr. Snodgrass, being the more remarkable, as it was in utter disregard of an official announcement from the said Dobie's pretended Presbyterian Church of Canada in connection with the Church of Scotland, that it had deposed the said Dr. Snodgrass from the ministry.

As belonging to the United Church, which is now, as I believe, in law and fact identical with the Presbyterian Church of Canada in connection with the Church of Scotland, I do verily believe that I am entitled to act as a member of the Temporalities Board and to administer the Fund intrusted to its care in conformity with the said Acts of the Provincial Legislatures obtained at the request of the Synod, and by the terms of which the rights of all commuting ministers, including those of said Dobie, and the small minority who with him seceded from the Synod, are preserved.

And I further sincerely believe and declare that the present action on the part of said Dobie, and in which he is encouraged by the members of his pretended Synod aforesaid, is a malicious attempt to deprive a large body of ministers of rights equally sacred with those which have been carefully and faithfully preserved to him and them and to claim and become possessed of the whole of a fund to which I verily believe the said Dobie and his pretended Synod have not a shadow of a claim, either personally or in their ecclesiastical capacity.

And I have signed.

JOHN COOK.

Sworn and acknowledged before me, at the city of Quebec, this thirty-first day of January, eighteen hundred and seventy-nine.

WM. WALKER,
Commissioner Superior Court.

(Endorsed.)

Affidavit of the Reverend John Cook, D. D.

Canada,
Province of Quebec, } Superior Court.
District of Montreal. }

The Rev. Robert Dobie - - - - - Petitioner.
and

"Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

I, John Jenkins, Doctor of Divinity, of the city and district of Montreal, being duly sworn, do depose and say:

That I am now, and have been for about fourteen years, minister of St. Paul's Church, in Montreal, aforesaid.

That in the year eighteen hundred and sixty-five, I was received into and became a member of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland.

That in the year eighteen hundred and sixty-nine I was appointed moderator of the said Synod, and that both before and after this period I have held several positions or offices of responsibility and trust by appointment of the said Synod, and as I believe to its satisfaction.

RECORD.

In the
Superior
Court.

No. 20D.
Affidavit of
the Rev.
John Cook,
D. D.,
filed with
Petition for
the dissolution
or suspension
of
order for
Writ of
Injunction.
—continued.

No. 20E.
Affidavit of
the Rev.
John
Jenkins, DD
filed with
Petition for
the dissolution
or suspension
of
order for
Writ of
Injunction.

RECORD.

—
In the
Superior
Court.
—

No. 20E.
Affidavit of
the Rev.
John
Jenkins, DD
filed with
Petition for
the dissolution
or suspension of
order for
Writ of
Injunction.
—continued.

That I have been a Presbyterian clergyman for about twenty-five years, and have made myself thoroughly familiar with the Presbyterian order and polity, and have a full knowledge of what is competent to Presbyterian Ecclesiastical Courts, to wit, the Kirk Session, the Presbytery, the Synod and the General Assembly.

That on the twenty-ninth of May, eighteen hundred and seventy-one, by special act and grace of the General Assembly of the Church of Scotland I was made and constituted by a unanimous vote of said General Assembly a minister or clergyman of the said Church of Scotland, with all the rights and privileges pertaining to clergymen of the said Church, and that I now hold that position¹⁰ and status as fully and completely as any other clergyman of the said Church of Scotland.

That the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, by its resolution, authorised the present administration and disposition of the said Temporalities Fund, and the obtaining of the legislation which has been obtained with reference to said fund.

That the said Temporalities Board, mentioned in the petition in this matter of the Reverend Robert Dobie, have been since the fifteenth of June, eighteen hundred and seventy-five, and are now acting under the authority of an Act passed by the Legislature of the Province of Quebec, to wit, thirty-eighth Victoria,²⁰ chapter sixty-four, assented to on the twenty-third of February, eighteen hundred and seventy-five, intituled "An Act to amend the Act intituled An Act to Incorporate the Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," and under the authority of an Act passed by the Legislature of the Province of Quebec, to wit, thirty-eighth Victoria, chapter seventy-two, assented to on the twenty-third of February, eighteen hundred and seventy-five, intituled "An Act respecting the Union of certain Presbyterian Churches therein named, and also under the authority of an Act passed by the Legislature of the Province of Ontario, to wit, thirty-eighth Victoria, chapter seventy-five.³⁰

That the said Synod obtained the passing of the said Acts.

That the said Reverend Robert Dobie's statement, as contained in his petition in this matter, to wit, that he, the said Dobie, when he came to Canada in the year eighteen hundred and fifty was "an ordained missionary of the Church of Scotland" is not true, as said Dobie's ordination took place in Canada, and then not until the seventh day of October, eighteen hundred and fifty-three, on which day the Presbytery of Glengarry did ordain the said Dobie as minister of Osnabrock, in the now Province of Ontario.

That it is not true that the said Dobie, as the said Dobie avers in his petition aforesaid, is or ever was a "minister of the Church of Scotland," he having⁴⁰ been merely a licentiate of said Church, which, according to the polity of said Church, as he, the said Dobie, very well knows, is a position different from and altogether inferior to that position which is held in said Church by an ordained minister.

That the Presbyterian Church of Canada in connection with the Church of Scotland, was from its commencement an independent body and a voluntary association, and was admitted to be so by the said Church of Scotland in Scotland, in

a letter from its Colonial Committee, addressed in the year eighteen hundred and forty-four, to the moderator and members of the said Presbyterian Church of Canada in connection with the Church of Scotland, which expressly states that "the Church of Scotland has never claimed any authority or exercised any control over your Synod, neither has she ever possessed or desired to possess the right of such interference."

That in the month of September, eighteen hundred and forty-four, the Synod being the supreme and highest Court and authority of said "Presbyterian Church of Canada in connection with the Church of Scotland," passed and adopted a Declaratory Act, declaring that said Synod had always possessed and then possessed and exercised a perfectly free, full, final, supreme and uncontrolled power of jurisdiction, discipline and judgment over said Church and over all congregations and ministers in connection therewith, without the right of review, appeal, or complaint or reference to any other Court, and that the words "in connection with the Church of Scotland" implied no right of jurisdiction or control in any form whatsoever by the said Church of Scotland over said Synod, but denoted merely the connection of origin and identity of standard and ministerial and Church communion.

That said supreme and free jurisdiction was a fundamental and essential part of the constitution of the said Synod and Church, and all ministers and probationers for ordination or induction into any pastoral charge were required to give their assent to said Declaratory Act of independence, as did the petitioner Dobie, on the seventh day of October, eighteen hundred and fifty-three, when he was ordained to the office of the ministry by the Presbytery of Glengarry, aforesaid.

That when, in eighteen hundred and sixty-five, I was inducted into the pastoral charge of St. Paul's Church, aforesaid, I did, as one of the conditions of so being inducted, solemnly adhere to the said Declaratory Act of independence, passed in September, eighteen hundred and forty-four.

That it is untrue that the Rev. John Cook, the Rev. James C. Muir and the Rev. George Bell seceded from the Presbyterian Church of Canada in connection with the Church of Scotland, as alleged by the said Dobie in his petition.

That the said Church, on the fifteenth of June, eighteen hundred and seventy-five, legally, and acting through and by the authority of its Synod or supreme and highest Court and of the said Acts above recited, joined to itself and united with the other Presbyterian Churches of Canada, changing its name (as it had a right to do by virtue of the supreme and free jurisdiction, which was a fundamental and essential part of the constitution of the said Synod and Church) to the Presbyterian Church in Canada, leaving out the words, "in connection with the Church of Scotland," and declaring that it retained its identity and all its property, rights and privileges under the name of the Presbyterian Church in Canada.

That by the rules of Presbyterian procedure and church government of the said Church, no Synod can exist unless it number fifteen members, of whom eight shall be ministers and seven may be elders.

That on the fifteenth of June, eighteen hundred and seventy-five, before the said union and change of name of the said Church had been accomplished, and while the said Synod of the said Presbyterian Church of Canada in connection

RECORD.

*In the
Superior
Court.*

No. 20E.
Affidavit of
the Rev.
John
Jenkins, DD
filed with
Petition for
the dissolution
or suspension of
order for
Writ of
Injunction.
—continued.

RECORD.

*In the
Superior
Court.*

No. 20g.
Affidavit of
the Rev.
John
Jenkins, DD
filed with
Petition for
the dissolution or sus-
pension of
order for
Writ of
Injunction.
—continued.

with the Church of Scotland was still in session, the said Dobie and six other ministers and two elders seceded from the said Church and Synod, and illegally, without having a quorum of fifteen members, pretended to constitute themselves as the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland, which said last-mentioned Synod was then legally in session in the city of Montreal, so that the statement of the said Dobie, that he and the other ministers who seceded with him as aforesaid, constituted and do now constitute the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland and belong thereto, is a pretence which, as I believe, is calculated to mislead and is designed to mislead your Honorable Court.

That in the year eighteen hundred and fifty-five, it was agreed by the said Dobie, and by all the ministers who had commuted their claims to the Clergy Reserve Fund in favour of said Synod, that they should cease to have any claim on or be entitled to any share of said commutation fund whenever they should cease to be ministers of said Presbyterian Church of Canada in connection with the Church of Scotland, as appears by the authentic minutes of said Synod for the said year.

That by virtue of the said Dobie's secession from said Synod and Church as aforesaid, on said fifteenth of June, eighteen hundred and seventy-five, he would have lost all right to claim from said Board any payment from said fund, or any right or claim thereon had it not been for the generosity of the Synod of the said Church from which he seceded, which obtained the passing of the said Acts above recited previous to said Union and change of name, one of the provisions of which is to the effect that all ministers who chose not to remain in the Church after said union should, nevertheless, be entitled to be paid the stipend from said fund annually, during life, which they had formerly been in the habit of receiving.

That the said Board have not infringed upon the amount of capital of the said fund necessary to secure the said Dobie the payment of his annual stipend during life of (\$450.00) four hundred and fifty dollars, which is all the interest which the said Dobie has in said fund.

That according to the rules of procedure and polity of the said Presbyterian Church of Canada in connection with the Church of Scotland, the said Church always acted through its highest court—the Synod, and the voice of the majority voting in said Synod, was always held to be the voice and finding of said Church in which the minority are bound to acquiesce, and the same rule applies in all other Presbyterian Churches, namely, that the decision of the majority expressed in the highest Church court binds the minority and the whole Church.

I also state that the said Presbyterian Church of Canada in connection with the Church of Scotland, still exists and maintains its identity in the Presbyterian Church in Canada.

Further, the said Church and Synod have the same connection with the Church of Scotland in Scotland which existed previous to said Union, that connection consisting, as has already been shewn, simply in origin, in identity of standards, and in ministerial and Church communion.

The same standards are still recognised and there is the same ministerial and Church communion.

The united Church receives members and ministers of the Church of Scotland, and the said Church of Scotland receives members and ministers who belong to the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, and who went into the said Union in the same way and to the same extent as it did before the Union, as witness the reception of the Rev. William M. Black, late of the city of Montreal, and of the Rev. Doctor Snodgrass, who took a leading part in promoting the said Union, by Presbyteries of said Church of Scotland, as ministers of parishes in the said Church. The reception of the Reverend Doctor Snodgrass being the more remarkable as it was in utter
 10 disregard of an official announcement from the said Dobie's pretended Presbyterian Church of Canada in connection with the Church of Scotland, that it had deposed the said Doctor Snodgrass from the ministry.

Further, this deponent believes that the present injunction on the part of said Dobie is an attempt to become possessed of the whole of the said Temporalities Fund for himself and his pretended Synod, and to deprive a large body of ministers of rights equally sacred with that which has been carefully preserved and guaranteed to him.

And further deponent saith not.

And hath signed,

JOHN JENKINS, D.D.

Sworn, taken and acknowledged before me, at the city of Montreal, this first day of March, eighteen hundred and seventy-nine.

ANDREW J. SIMPSON,

A Commissioner, Superior Court, district of Montreal.

(Endorsed.)

Affidavit of the Revd. John Jenkins, D.D.

Canada,
 Province of Quebec,
 District of Montreal.

Superior Court.

The Reverend Robert Dobie, - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
 Presbyterian Church of Canada in connection with the
 Church of Scotland," *et al.* - - - - - Respondents.

Robert Campbell, of the city and district of Montreal, being duly sworn, deposeseth and saith :

That he was baptised in the Presbyterian Church of Canada in connection with the Church of Scotland, educated in its college in Kingston, Ontario, and ordained as a minister of said Church, in the year eighteen hundred and seventy-
 40 two.

That he is and has been thoroughly familiar with its history and constitution for a great many years, especially as having held for many years the office

RECORD.

In the
 Superior
 Court.

No. 20E.
 Affidavit of
 the Rev.
 John
 Jenkins, DD
 filed with
 Petition for
 the dissolution
 or suspension
 of order for
 Writ of
 Injunction.
 —cont'd.

No. 20F.
 Affidavit of
 the Rev.
 Robert
 Campbell,
 filed with
 Petition for
 the dissolution
 or suspension
 of order for
 Writ of
 Injunction.

RECORD. of Presbytery Clerk, and as having been appointed by the Synod of said Church a member of the Committee on Legislation, prior to the Union mentioned hereafter, which took measures to obtain the Acts of the Legislatures hereinafter referred to, and as having been at the time of the said union, in June, eighteen hundred and seventy-five, chairman of the committee of said Synod on arrangements for carrying said union into effect.

*In the
Superior
Court.*

No. 20F.
Affidavit of
the Rev.
Robert
Campbell,
filed with
Petition for
the dissolution
or suspension
of order for
Writ of
Injunction.
—continued.

That the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, by its resolution authorised the present administration and disposition of the Temporalities Fund and the obtaining of the Legislation which has been obtained with reference to said fund.

That the said Temporalities Board mentioned in the petition in this matter of the Reverend Robert Dobie, have been since the fifteenth of June, eighteen hundred and seventy-five, and are now, acting under the authority of an Act passed by the Legislature of the Province of Quebec, to wit, thirty-eighth Victoria, chapter sixty-four, assented to on the twenty-third of February, eighteen hundred and seventy-five, intituled an Act to amend the Act intituled "An Act to incorporate the Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," and under the authority of an Act passed by the Legislature of the Province of Quebec, to wit, thirty-eighth Victoria, chapter seventy-two, assented to on the 20 twenty-third of February, eighteen hundred and seventy-five, intituled "An Act respecting the union of certain Presbyterian Churches therein named," and also under the authority of an Act passed by the Legislature of the Province of Ontario, to wit, thirty-eighth Victoria, chapter seventy-five.

That the said Synod obtained the passing of said Acts.

That the said Reverend Robert Dobie, is not and never was an ordained minister of the Church of Scotland, in Scotland.

That the Presbyterian Church of Canada in connection with the Church of Scotland, was from its commencement an independent body and a voluntary association, and was admitted to be so by the said Church of Scotland, in Scotland, 30 in a letter from its Colonial Committee addressed, in the year eighteen hundred and forty-four, to the moderator and members of the said Presbyterian Church of Canada in connection with the Church of Scotland, which expressly states that "the Church of Scotland has never claimed any authority or exercised any control over your Synod, neither has she ever possessed, nor desires to possess the right of such interference."

That in the month of September, eighteen hundred and forty-four, the Synod being the Supreme and highest Court and authority of said "Presbyterian Church of Canada in connection with the Church of Scotland," passed and adopted a declaratory Act declaring that said Synod had always possessed and then 40 possessed and exercised a perfectly, free, full, final, supreme and uncontrolled power of jurisdiction, discipline and judgment over said Church and over all congregations and ministers in connection therewith, without the right of review, appeal or complaint, or reference to any other Court, and that the words in connection with the Church of Scotland, implied no right of jurisdiction or control in any form whatsoever by the said Church of Scotland over said Synod, but denoted merely the connection of origin and identity of standard and ministerial and Church communion.

That said supreme and free jurisdiction was a fundamental and essential part of the constitution of the said Synod and Church, and all ministers and probationers for ordination or induction into any pastoral charge were required to give their assent to said declaratory Act of independence, as did the petitioner on the seventh day of October, eighteen hundred and fifty-three, when he was ordained to the office of the ministry by the Presbytery of Glengarry.

That it is untrue that the Reverend John Cook, the Reverend James E. Muir and the Reverend George Bell seceded from the Presbyterian Church of Canada in connection with the Church of Scotland, as alleged by the said Dobie in his petition.

That the said Church, on the fifteenth of June, eighteen hundred and seventy-five, legally and acting through and by the authority of its Synod or supreme and highest Court, and of the said Acts above recited, joined to itself and united with the other Presbyterian Church of Canada, changing its name (as it had a right to do by virtue of the supreme and free jurisdiction which was a fundamental and essential part of the constitution of the said Synod and Church) to the Presbyterian Church in Canada, leaving out the words in connection with the Church of Scotland, and declaring that it retained its identity and all its property rights and privileges under the name of the Presbyterian Church in Canada.

That by the rules of Presbyterian procedure and church government of the said Church, no Synod can exist unless it number fifteen members, of whom eight shall be ministers and seven may be elders.

That on the fifteenth of June, eighteen hundred and seventy-five, before the said union and change of name of the said Church had been accomplished, and while the said Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland was still in session, the said Dobie and six other ministers and two elders seceded from the said Church and Synod and illegally without having a quorum of fifteen members, pretended to constitute themselves as the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland, which said last mentioned Synod was then legally in session in the city of Montreal.

That in the year eighteen hundred and fifty-five, it was agreed by the said Dobie and by all the ministers who had commuted their claims to the Clergy Reserve Fund in favour of said Synod that they should cease to have any claim on, or be entitled to any share of said commutation fund whenever they should cease to be ministers of said Presbyterian Church of Canada in connection with the Church of Scotland, as appears by the authentic minutes of said Synod for the said year.

That by virtue of the said Dobie's secession from said Synod and Church as aforesaid on said fifteenth of June, eighteen hundred and seventy-five, he would have lost all right to claim from said Board any payment from said fund, or any right or claim thereon, had it not been for the generosity of the Synod of the said Church from which he seceded, which obtained the passing of the said Acts above recited previous to said union and change of name, one of the provisions of which is to the effect that all ministers who chose not to remain in the Church after said union, should, nevertheless, be entitled to be paid the stipend

RECORD.

*In the
Superior
Court.*

No. 20r.
Affidavit of
the Rev.
Robert
Campbell,
filed with
Petition for
the dissolu-
tion or sus-
pension of
order for
Writ of
Injunction.
—continued.

RECORD. from said fund annually during life which they had formerly been in the habit of receiving.

*In the
Superior
Court.*

No. 20F.
Affidavit of
the Rev.
Robert
Campbell,
filed with
Petition for
the dissolution
or suspension
of order for
Writ of
Injunction.
—continued.

That the said Board have not infringed upon the amount of capital of the said fund necessary to secure the said Dobie the payment of his annual stipend during life of (\$450.00) four hundred and fifty dollars, which is all the interest which the said Dobie has in said fund.

That according to the rules of procedure and polity of the said Presbyterian Church of Canada in connection with the Church of Scotland, the said Church always acted through its highest Court, the Synod, and the voice of the majority voting in said Synod was always held to be the voice and finding of said Church 10 in which the minority are bound to acquiesce, and the same rule applies in all other Presbyterian Churches, namely, that the decision of the majority expressed in the highest Church Court, binds the minority and the whole Church.

I also state that the said Presbyterian Church of Canada in connection with the Church of Scotland, still exists and maintains its identity in the Presbyterian Church in Canada.

Further, the said Church and Synod have the same connection with the Church of Scotland, in Scotland, which existed previous to said union, that connection consisting, as has already been shewn, simply in identity of standards and in ministerial and Church communion. The same standards are 20 still recognized and there is the same ministerial and Church communion.

The united Church receives members and ministers of the united Church in Scotland, and the said Church of Scotland receives members and ministers who belong to the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, and who went into the said union, in the same way, and to the same extent as it did before the union, as witness the reception of the Reverend William M. Black, late of the city of Montreal, and of the Reverend Doctor Snodgrass, who took a leading part in promoting the said union, by Presbyteries of said Church of Scotland, as ministers of parishes in the said church. The reception of the Reverend Doctor Snodgrass being the more remarkable as 30 it was in utter disregard of an official announcement from the said Dobie's pretended Presbyterian Church of Canada in connection with the Church of Scotland, that it had deposed the said Doctor Snodgrass from the ministry.

Further, this deponent believes that the present injunction on the part of said Dobie, is an attempt to become possessed of the whole of the said Temporalities Fund for himself and his pretended Synod, and to deprive a large body of ministers of rights equally sacred with that which has been carefully and faithfully preserved and guaranteed to him.

And I have signed.

ROBERT CAMPBELL. 40

Sworn and acknowledged before me, at the city of Montreal, this thirtieth day of January, eighteen hundred and seventy-nine.

ANDREW J. SIMPSON,
A Commissioner Superior Court, district of Montreal.

(Endorsed.)

Affidavit of the Reverend Robert Campbell.

Schedule No. 23.

Canada,
Province of Quebec, }
District of Montreal.

Superior Court.

RECORD.

*In the
Superior
Court.*

The Rev. Robert Dobie, - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," - - - - - Respondents.

No. 21.
Answer to
Petition to
quash
Injunction
filed 14th
March 1879

10 The Petitioner the Reverend Robert Dobie, for answer to the petition of all the Respondents, except the Reverend Gavin Lang and Sir Hugh Allan, who acquiesce by their declaration herein filed in the Petitioner's pretension, says :

That all the allegations of Respondents' petition which do not agree with the allegations of Petitioner's petition herein and this his answer to Respondents' petition are untrue, and Petitioner denies each and all of them ;

20 That all the matters alleged by Petitioner in his petition herein are true, but that the issues there raised cannot be disposed of on a petition to dissolve or suspend the writ of injunction herein ; and the matters and things set out in Respondents's petition form the subject of a plea in answer to Petitioner's petition herein and the Respondents have pleaded the same matters in their plea filed herein.

30 That it is untrue that in eighteen hundred and fifty-six it was agreed that the claims of commuting ministers at their deaths should revert to the "Synod" of the Presbyterian Church of Canada in connection with the Church of Scotland, as falsely alleged in said petition ; but, on the contrary, the claims of individual ministers commutators, at their respective deaths reverted to the Temporalities Fund, to wit, the permanent endowment Fund created in eighteen hundred and fifty-five for the said Church by the renunciation of the personal claims of Petitioner and other commutators to the capital sums which he and they were then respectively entitled to receive from the proceeds of the Clergy Reserves, and the acceptance by Petitioner and the other commutators of a reduced annual allowance therefrom, to wit, the sum of four hundred and fifty dollars annually, instead of six hundred dollars, which the capital sum they and each of them were personally entitled to receive would yield during his and their natural lives respectively, at a legal rate of interest.

40 That it is untrue that the Synod of the said Church has since the year eighteen hundred and fifty-six or fifteenth of June eighteen hundred and seventy-five, with the consent of Petitioner, "controlled and administered said Fund," as falsely alleged in said Respondents' petition ; but, on the contrary, the Commissioners appointed in eighteen hundred and fifty-five by the said commuting ministers to hold said Fund in trust, with the consent of said Synod, and subsequently delivered over the said Fund to the Board Respondents, incorporated under the Act twenty-two Victoria, chapter sixty-six of the late Province of Canada, which said corporation "since its incorporation" held and administered the said Fund until said fifteenth June eighteen hundred and seventy-five, in trust for the said Church and its ministers and members, and are

RECORD. alone legally competent to hold and administer the same, and the present Respondents are not legally competent and entitled to hold and administer the said fund.

*In the
Superior
Court.*

No. 21.
Answer to
Petition to
quash
Injunction,
filed 14th
March 1879
—continued.

That in eighteen hundred and fifty-two Petitioner was a minister of the Church of Scotland, in Scotland, and then and there was elected and appointed by the Church of Scotland and by the Reverend John Cook (one of the deponents in support of the petition to quash the writ of injunction) and the Reverend Alexander Mathieson, both delegates of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, and of the Clergy Reserves and Commissioners, as a minister and a missionary from the Church of Scotland to its connection Church in Canada.

That the Presbyterian Church of Canada in connection with the Church of Scotland and the ministers thereof, frequently and at divers times from eighteen hundred and thirty-one until eighteen hundred and seventy-five, claimed to be and were, not merely a branch of the Church of Scotland in Canada, but the Church of Scotland in Canada, and were during said period at divers times recognized and acknowledged to be the Church of Scotland in Canada by the General Assembly of the Church of Scotland and its Colonial Committee, by the Acts of the Imperial and Canadian Provincial Parliaments (*vide* three and four Victoria, chapter seventy-eighth, section 5) and by the Synod and representatives of 20 the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland; and Petitioner declares: That it was only by reason of the identity and connection of the said Presbyterian Church of Canada in connection with the Church of Scotland—with the Church of Scotland, to wit, one of the established churches of the United Kingdom of Great Britain and Ireland, that the said Presbyterian Church of Canada in connection with the Church of Scotland and its ministers became and were entitled with the Church of England and its ministers to share in the proceeds of the Clergy Reserves in Canada, to the exclusion of all other Presbyterian bodies laying claim thereto, though professing identity of standards and belief with the Church of Scotland. 30

That the fund constituted by the commutation of the claims upon the Clergy Reserves of Petitioner and other ministers of the Presbyterian Church of Canada in connection with the Church of Scotland is and was a permanent endowment created from the proceeds of that portion of the said Clergy Reserves accorded and granted by the Crown to the said Church of Scotland in Canada, to wit, to the said Presbyterian Church of Canada in connection with the Church of Scotland, and were and are solely for the support and maintenance of said Church and of the ministers and missionaries thereof; and the said Synod never had any power to change the destination of the said fund or its revenues; that the commutors of claims had no power to alter the destination of said fund nor even the revenues thereof, saving only the surplus revenues thereof, as more fully explained in Petitioner's petition. And the said Fund was created and continued and is a permanent endowment in trust for the benefit of said Church for all time to come. 40

That Petitioners interest in said fund is not merely personal, as erroneously declared by Respondents, but is also the interest of the constituent of a trust constituted and established by him and others for a specific purpose in be-

half of an object more precious to Petitioner than money—the maintenance and permanent endowment of the said Presbyterian Church of Canada in connection with the Church of Scotland—to which object Petitioner has not only devoted the capital sum to which he was entitled personally from the said Clergy Reserves in eighteen hundred and fifty-five, and restricted himself to a reduced allowance therefrom for his lifetime, but also gave thereto his life and his humble though best efforts as a minister of the said Church.

That deponent is in good faith in instituting the present action, and is not acting from any malicious motive, but is acting personally and as the representative of many others in different parts of Canada, with the concurrence of all the ministers, members and adherents of the Presbyterian Church of Canada in connection with the Church of Scotland and of the Synod thereof.

That the individual Respondents, saving only the Respondents Sir Hugh Allan and the Reverend Gavin Lang, seceded and left the said Presbyterian Church of Canada in connection with the Church of Scotland, on the fifteenth June, eighteen hundred and seventy-five, and joined themselves to the Canada Presbyterian Church and certain other Bodies professing different standards of belief from those adhered to and taught and enjoined in the said Presbyterian Church of Canada in connection with the Church of Scotland and with them constituted and found a religious denomination identical with the Canada Presbyterian Church which virtually absorbed the seceders into it, under the name of the Presbyterian Church in Canada.

That the meeting of the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland was duly called and held in St. Paul's Church, Montreal, on the fourteenth and fifteenth June, eighteen hundred and seventy-five; That Petitioner protested against all resolutions proposed and carried, to give effect to the secession from the said Presbyterian Church of Canada in connection with the Church of Scotland, both by protests filed ecclesiastically and by the ministry of a notary—copy of those protests is herewith filed as Exhibit M.N.—yet, notwithstanding, the Respondents and divers others, mentioned in Petitioner's petition, left said St. Paul's Church and went to another building in the city of Montreal, to wit, to the Victoria Skating Rink, and united with the said Canada Presbyterian Church and other Bodies; but Petitioner and many others remained in said St. Paul's Church and then continued legally and regularly the proceedings of said Synod, and adjourned; and have since regularly met and carried on the business of said Synod until the present time.

That Respondents are illegally infringing upon and deteriorating the capital of the said trust fund and have done so since the fifteenth June, eighteen hundred and seventy-five to the extent of over Forty thousand dollars;

That the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland, has no power and never had power by resolution or otherwise, to affect the civil rights of Petitioner, and the said Synod never had any other independence or control through or by means of the Declaratory Act of (1844) eighteen hundred and forty-four, referred to in Respondents' petition, than in matters "spiritual and ecclesiastical" to wit: matters coming strictly within its own confines; but the Petitioner expressly denies that the said Synod ever had power by majority or even unanimously to affect his civil rights, or to

RECORD.

In the
Superior
Court.

No. 21.

Answer to
Petition to
quash
Injunction,
filed 14th
March 1879
—continued.

RECORD. arrogate to itself rights of control which it did not and could not possess, or to change or vary the terms of a trust regulated by Act of Parliament and by the terms of its creation, which expressly prohibited the interference of the Synod without the consent of the commutators, to wit, the constituents of the trust funds; and the Respondents have been and are acting illegally and unconstitutionally, under said Acts of the Legislature of the Province of Quebec.

*In the
Superior
Court.*

No. 21.
Answer to
Petition to
quash
Injunction,
filed 14th
March 1879
—continued.

That in the years eighteen hundred and forty-four and forty-five, a secession of certain ministers from the Presbyterian Church of Canada in connection with the Church of Scotland took place; that said last-mentioned seceding ministers objected to remain in communion with the Presbyterian Church of Canada in connection with the Church of Scotland, chiefly on the ground of the latter Church's connection with the Church of Scotland.

That said last-mentioned seceders took the name of the Presbyterian Church of Canada and professed to be identical with and to adhere to the same standards and belief of the Church of Scotland, and claimed the right, upon this last ground, to participate in the proceeds of the Clergy Reserves; but the Presbyterian Church of Canada in connection with the Church of Scotland objected to such participation, on the ground that the seceders had left the Church of Scotland in Canada; and the law officers of the Crown in Canada, in eighteen hundred and forty-five, maintained this objection, and all the allowances which the said seceders had drawn from the Clergy Reserves were henceforth discontinued to such seceders, and continued solely to those adhering to the Presbyterian Church of Canada in connection with the Church of Scotland.

That the individual Respondents and other seceders mentioned in the Petitioner's petition herein are in no better position than were the said seceders from the Presbyterian Church of Canada in connection with the Church of Scotland in eighteen hundred and forty-four also eighteen hundred and forty-five.

That the terms of the agreement entered into by the commuting ministers in eighteen hundred and fifty-five were expressly framed to prevent seceding ministers from being eligible, after secession, to participate in the benefits arising from said fund and to preserve said fund solely and only for the benefit of those who maintain and continue their connection with the Presbyterian Church of Canada in connection with the Church of Scotland.

That the right to participate in the Clergy Reserves was granted and conceded to the Presbyterian Church of Canada in connection with the Church of Scotland, on the ground that said Church was identical with and the only representative church in Canada of the Church of Scotland as an established church of the United Kingdom.

That the said Respondents are acting illegally in their administration of said fund and have paid large sums of money to persons not entitled to receive the same, and should be restrained until the final determination of the present suit.

That the whole fund administered by Respondents would be endangered beyond repair if said injunction were dissolved or suspended.

That Petitioner has given security in a large sum of money for all costs and damages that may be occasioned by reason of said injunction.

That the Act of the Province of Quebec mentioned in Respondents' petition under and by virtue of which Respondents pretend to be acting, are illegal and

unconstitutional ; but neither the said Act or the Acts of the Province of Ontario mentioned in said petition can be put in issue upon a petition to dissolve or suspend an injunction.

That the said Act of the Province of Quebec (thirty-eight Victoria, chapter sixty-four) relates to subject matters beyond the competency of the Local Legislature under the British North America Act, eighteen hundred and sixty-seven, to wit, the Act of Parliament of the United Kingdom of Great Britain and Ireland (thirtieth and thirty-first Victoria, chapter three), and the Legislature of the Province of Quebec was incompetent to pass said Act ; and the said Act of the Province of Quebec, in so far as it derogates from, or purports to modify or vary the Act twenty-second Victoria, chapter sixty-six, of the heretofore Province of Canada, is null and of no effect.

That the subject matters of said Act of the Legislature of Quebec are not of a mere local or private nature within the Province of Quebec, but affect the rights of persons residing beyond the Province of Quebec, and not subject to its jurisdiction.

That the Petitioner is not subject to the Legislation of the said Province of Quebec, affecting his interests in the said funds, and the said Legislature of said Province of Quebec has exceeded its competency and jurisdiction in passing said Act.

That the interests of the Petitioner in the moneys arising from the said commutations and in the Temporalities' Fund, as constituted by the Act (twenty-second Victoria, chapter sixty-six) of the late Province of Canada, are not of a mere local or private nature in the Province of Quebec, but are a matter of general interest.

That the objects of the corporation Respondents, under the Act twenty-second Victoria, chapter sixty-six, of the heretofore Province of Canada, were not, and are not, of a provincial nature, but extends to persons residing in the Provinces of Ontario and Quebec.

That the said Act of the Legislature of the Province of Quebec is illegal and unconstitutional and beyond the competency of the said Legislature.

That the said Act of the Legislature of the Province of Quebec, (thirty-eighth Victoria, chapter sixty-four) is further illegal and unconstitutional in permitting and providing for the payment of an annual stipend to ministers who have ceased to be members of, or to have any connection with, the Presbyterian Church of Canada in connection with the Church of Scotland, and in providing that the Temporalities Board, to wit, the corporation, Respondents, should, if necessary, draw upon the capital fund, to wit, the Temporalities Fund, in order to provide for the payment of the stipends and salaries to ministers, as mentioned in the said last-mentioned Act, and in providing that, "as often as any vacancy in the Board for the management of the said Temporalities Fund occurs by death, resignation or otherwise, the beneficiaries entitled to the benefit of the said fund may each nominate a person, being a minister or member of the said united church ; or, in the event of there being more than one vacancy, then one person for each vacancy, and the remanent members of the said Board shall thereupon from among the persons so nominated as aforesaid, elect the person or number of persons necessary to fill such vacancy or vacancies, selecting the per-

RECORD.

In the
Superior
Court.

No. 21.

Answer to
Petition to
quash
Injunction,
filed 14th
March 1879
—continued.

RECORD.

In the
Superior
Court.

No. 21.

Answer to
Petition to
quash
Injunction
filed 14th
March 1879
—continued.

“son or persons who may be nominated by the largest number of beneficiaries to
“nominate, as aforesaid, the remanent members of the Board shall fill up the vac-
“ancy or vacancies from among the ministers or members of the said united church,”
thus depriving a minister who may have retained his connection with the Pres-
byterian Church of Canada in connection with the Church of Scotland of the
right to administer the funds under the control of the said corporation, Respond-
ents, and disfranchising and disqualifying all members of the said last-mentioned
church from administering the said fund which of right alone belongs to them,
and, further, in setting aside the legal method for filling vacancies in the Board,
Respondents, as prescribed by the said Act, twenty-second Victoria, chapter sixty-
six, and the by-laws made thereunder. That the said statute of the late Pro-
vince of Canada (twenty-second Victoria, chapter sixty-six) is legally and con-
stitutionally in full force and effect, and the Respondents are subject to its
provisions, and the by-laws made thereunder by the Presbyterian Church of
Canada in connection with the Church of Scotland previous to the fourteenth day
of June, eighteen hundred and seventy-five, and by those members, ministers and
elders of the said last-mentioned church, who remained in connection therewith,
and who have not seceded therefrom on and since the fifteenth day of June,
eighteen hundred and seventy-five, are now in full force.

That one hundred and eight of the claimants upon the said fund are not quali-
fied to rank thereon, but were illegally added to the list of commutators just before
the secession on the fifteenth day of June, eighteen hundred and seventy-five,
without any right whatever; that these persons are unlawfully drawing from
said fund the sum of two hundred dollars annually.

That, in fact, the number of commuting ministers is now confined to a small
number.

That no one is suffering by reason of the issue and existence of the said in-
junction against Respondents: that the Respondents on and previous to the
thirty-first day of December last past, issued checks to ministers for the payment
of allowances, and those who wished presented the same for payment and received
payment; that the said Petitioner has not presented his check for such payment,
though deponent did under protest.

That no additional payments or allowances will become due to ministers
having claims on said Board until the month of July, eighteen hundred and
seventy-nine.

Wherefore, the Petitioner prays that the said Respondents' petition be dis-
missed, and further prays, as in and by his petition he has already prayed, the
whole, with costs of suit and exhibits, *distrains*, to the undersigned attorneys.

Montreal. 13th March, 1879.

MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioner, the Rev. Robert Dobie.

And the said Petitioner, the Reverend Robert Dobie, without waiver of the
foregoing answer, but reserving to himself all the benefit thereof for further an-
swers to Respondents' petition, says:

That each, all and every the allegations of the said petition of the Respond-
ents are false, untrue and unfounded in fact and insufficient in law to maintain the
conclusions thereof.

Wherefore the Petitioner prays that the said Respondents' petition be dismissed, and further prays, as in and by his petition he has already prayed, the whole, with costs of suit and exhibits, *distrains*, to the undersigned attorneys.
Montreal, 13th March, 1879.

MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioner, the Reverend Robert Dobie.

(Duly received copy.)

JOHN L. MORRIS,
Atty. for all the Respondents
10 except the Rev. Gavin Lang and Sir Hugh Allan.

(Endorsed.)

Answer to petition to quash injunction—Filed 14th March, 1879.
(Paraphed) G. H. K. Dep. P.S.C.

RECORD.

In the
Superior
Court.

No. 71.
Answer to
Petition to
quash
Injunction,
filed 14th
March 1879
—continued.

Schedule No. 24.

Canada,
Province of Quebec, }
District of Montreal.

Superior Court.

The Reverend Robert Dobie, - - - - - Petitioner.
vs.

No. 22.
Affidavit of
Douglas
Brymner,
filed 14th
March 1879

20 "Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

Douglas Brymner, of the city of Ottawa, in the Province of Ontario, an officer of the Civil Service of Canada, being duly sworn deposes, and says:

1. I have carefully read over the petition of Respondents in this suit for suspension of the writ of injunction in this matter, and five affidavits thereto attached, and considered the same.

2. I am a native of that part of the United Kingdom of Great Britain and Ireland called Scotland. I was admitted a member of the Church of Scotland, 30 by baptism, and have ever since remained a member of said Church, either in said Scotland or in Canada, as a member of the branch of said Church, known and designated as the Presbyterian Church of Canada in connection with the Church of Scotland, and I was ordained an elder of the East Parish of Greenock, in said Scotland.

3. In the year eighteen hundred and fifty-seven, I settled in the now 40 Province of Quebec. The certificates of my being an elder in good standing of the said Church of Scotland, was presented by me to and received and accepted by a Kirk-Session of the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland, in said Quebec, and I was inducted into the eldership and became a member of said kirk-session and of the congregation over which it presided, on the ground of the ministerial and church communion between the said Synod and the said Church of Scotland, which it was declared

RECORD.

*In the
Superior
Court.*

No. 22.

Affidavit of
Douglas
Brymner,
filed 14th

March 1879

—continued.

existed at the date of my being admitted as a member and elder of said congregation and kirk-session, and which it was declared in the Act declaring the spiritual independence of the said Synod had always existed between the said Synod and the said Church of Scotland, said communion being used to designate the uniformity of belief by which a number of persons are united in one church.

4. It is not true, as alleged in affidavit of Reverend John Cook, one of the Respondents, and a deponent to the said petition of Respondents, and at page three thereof, that the Presbyterian Church aforesaid, to wit, the Presbyterian Church of Canada in connection with the Church of Scotland, was from its commencement an independent body; the said church was from its beginning a body "spiritually" independent, as appears by the official and authentic minutes of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, herewith filed to form part of the record of this cause, as petitioner Dobie Exhibits "BBB," at page fifteen of the said minutes, dated Montreal, eighteen hundred and forty-four, (1844.)

4a. It is not true that the "words in connection with the Church of Scotland," imply no right of jurisdiction over said Synod, as alleged at pages five and six of petition of Respondents in this matter: these words imply no right of "authoritative" jurisdiction as appears by said Synod minutes filed, and at page thirty-four thereof of date, Montreal, eighteen hundred and forty-two.

5. It is misleading to say, as is said in an alleged extract of "a letter from the Colonial Committee of the Church of Scotland," at page three of said Dr. Cook's affidavit aforesaid, that the Church of Scotland has never claimed the right of interference over the said Synod, for the Church of Scotland has claimed the right of interference over the "church" of which said Synod is a court, and has exercised "direct interference" over congregations of said "church," as appears by Synod minutes filed, and at page thirty-three of said last-mentioned date.

6. I know the Reverend John Cook, one of the Respondents, and a deponent in this matter.

7. On the seventh day of June, eighteen hundred and thirty-one, as appears by the said minutes filed, a convention of ministers and lay commissioners determined in the formation of a Canadian Synod and Presbyteries in connection with the Church of Scotland, leaving it to the Venerable the General Assembly of the said Church of Scotland to determine the particular nature of that connection, as more fully appears at pages one and two of said minutes for the year 1831.

8. On the 13th day of June aforesaid, and after the formation of said Synod, a memorial was addressed to the said General Assembly, in terms of said determination, as more fully appears at pages fifteen and sixteen of said minutes of 1831.

9. On the sixth day of August, eighteen hundred and thirty-three, an extract from the record of the said General Assembly was transmitted to the Moderator of the said Synod, which under the name of "The Declaratory Enactment," was ordered to be inscribed in the minutes, providing that churches in the colonies, when first formed into Synods, should receive no minister as a member who had not been ordained by a Presbytery of the said Church of Scotland, as more fully appears at pages forty-two and forty-three of said minutes, filed for the year 1833.

10. On the first day of September, eighteen hundred and thirty-seven, as appears at page one hundred and thirty-five of the said minutes of said last-mentioned year filed, the said Synod instructed a Committee to consider the propriety of sending a deputation to the said General Assembly for obtaining a modification of the existing relation, and also for obtaining and establishing a Collegiate Theological Institution, which modification as more fully appears at page one hundred and forty-four of the said minutes of said last-mentioned year filed, was for the education of candidates for the ministry and the licensing of probationers.

10 11. On the sixth day of August, eighteen hundred and thirty-eight, as more fully appears at page one hundred and sixty-one of said minutes for said last-mentioned year filed, it was intimated that the said General Assembly had agreed to sanction the education of young men for the ministry in the Colonies, under certain regulations to be prescribed by them.

12. A letter from the said General Assembly of the Church of Scotland, addressed to the Presbyterian churches in the British Colonies in connection with the Church of Scotland, signed on the twenty-third day of May, eighteen hundred and forty years—in the name, in the presence, and at the appointment of said General Assembly by the Moderator thereof, informs the said last-mentioned churches that having watched with interest the formation of ecclesiastical judicatories in the Colonial settlements, they feel that to the said colonial churches thus organized, the spiritual interests of the Scottish population may be safely entrusted, and that whatever benefits the said General Assembly wish to communicate may be best conveyed through the different Synods or Presbyteries, over whom, however, they decline all authoritative jurisdiction, as more fully appears at pages thirty-three to thirty-seven of said minutes filed, of date Montreal, eighteen hundred and forty-two.

13. On the seventh day of August, eighteen hundred and thirty-eight, the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, unanimously adopted a preamble and certain resolutions, declaring in substance that being deeply aggrieved by the unjust treatment which, "*as a branch of the Established Church of Scotland*" they had received, resolved to continue more energetically their correspondence with the said General Assembly of the Church of Scotland and others, and to invite them to co-operate for the vindication of a just national right, based on a treaty, viz., the right of their countrymen, to wit, the people of Scotland throughout the Colonies, to an equal participation with the people of England in all civil and ecclesiastical privileges and advantages, as more fully appears at page one hundred and seventy of said minutes filed of said last-mentioned year.

14. I produce and file to form part of the record in this cause, a pamphlet, entitled "*Faults and Failures of the late Presbyterian Union in Canada*," by Douglas Brymner, to wit, the present deponent, which is marked as Petitioner Dobie's Exhibit C. C., and I declare that the matters contained in said pamphlet, which are matters alleged to be facts, and not statements of arguments, comments or inferences, are to the best of my knowledge and belief true.

15. On the first day of June, eighteen hundred and thirty-seven, Mr. Cook, to wit, the Reverend Doctor John Cook, aforesaid, one of the Respondents in this

RECORD.

In the
Superior
Court.

No. 22.
Affidavit of
Douglas
Brymner,
filed 14th
March 1879
—continued.

RECORD. matter, read to the Presbytery of Quebec the draft of a letter of instruction to Dr. Mathieson, who was proceeding to Scotland as a representative to the Mother Church, "to wit, the aforesaid Church of Scotland" the draft was approved by the Synod, and ordered to be transmitted. It is signed by "John Cook, Moderator of the Presbytery of Quebec," and contains the following words: "*Clergy Reserves*," you will endeavour to keep alive in the Church of Scotland the interest already expressed in our just claims to a portion of these reserves, as belonging to an ESTABLISHED CHURCH of the British Empire, co-ordinate with the Church of England, as more fully appears at page nine of said pamphlet *C.C.* filed.

—
In the
Superior
Court.
—
No. 22.
Affidavit of
Douglas
Brymner,
filed 14th
March 1879
—continued.

16. In the year eighteen hundred and thirty-seven the Honorable William Morris was sent to Scotland to vindicate the claims of the members of the Church of Scotland living in Canada, by resolutions passed at Cobourg in Upper Canada, containing among others, these words: "That all members of our Church throughout Canada should resist by every constitutional means all attempts to encroach on our rights, and shall rest only when no disability shall remain to be removed, and when the provisions of the Act of Union in reference to the Church of Scotland shall be fully complied with," as more fully appears at pages nine and ten of said pamphlet filed.

17. On the fourth of January, eighteen hundred and thirty-nine, Sir 20 George Grey, Colonial Secretary, wrote to the Chairman of the Colonial Committee, acknowledging receipt of a memorial of the Rev. Dr. John Cook, relative to the grant to the "Church of Scotland in Lower Canada," as more fully appears at page ten of said pamphlet, *C.C.* filed.

18. On the seventh of August, eighteen hundred and forty, the Act 3 & 4 Vic., chap. LXXVIII, provided for certain interests or proceeds of sales of Clergy Reserves, being divided into three equal parts, two to be appropriated to the Church of England and one to the Church of Scotland in Canada (Imperial Act 3 & 4 Victoria, chap. lxxviii.)

19. I produce and file a book entitled "Cyclopædia of Religious Denomi- 30 nations," containing authentic accounts of the different creeds and systems prevailing throughout the world, written by members of the respective bodies, to form part of the record of the present cause, and the same is marked *D.D.*

20. On the eleventh of July, eighteen hundred and forty-three, as appears more fully by the minutes filed, and at page twenty-three of said minutes, Toronto, 1843, a debate took place in the aforesaid Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, in the course of which said debate, "it was also moved by Dr. Cook, and seconded by Mr. McGill, that the paper on the table of the Synod, submitted by Mr. Gale, be adopted." The following is part of the said resolution so moved by Dr. Cook, 40 to wit, the said Dr. John Cook, one of the Respondents in this cause:

"That this Synod regard with the utmost pain and alarm, the conduct of the supreme authorities in the State, in rejecting the claims recently made by the Church of Scotland," to wit, the claims made by an overwhelming majority, as was alleged, of the General Assembly of the said Church of Scotland.

21. On the eighteenth of May, eighteen hundred and forty-three, a large number of ministers and elders of the aforesaid Church of Scotland, did, in Scot-

land, secede and withdraw from the communion of the said Church of Scotland, declaring, among other matters of complaint, that the Civil Courts have power to supersede the majority of a Church Court of the Establishment in regard to the exercise of its spiritual functions as a Church Court, and to authorise the minority to exercise the said functions in opposition to the Court itself, and to the superior judicatories of the Establishment, to wit, of the General Assembly or Supreme Court of the said Church of Scotland, as more fully appears at pages one and two of the article "The Free Church of Scotland, by Rev. William Wilson, Dundee," contained in said Cyclopædia of Religious Denominations, filed as of record in this cause, marked D.D.

RECORD.

*In the
Superior
Court.*

No. 22.
Affidavit of
Douglas
Brymner,
filed 14th
March 1879
—continued.

22. In the affidavit of the said John Cook in support of the petition of Respondents in this matter, and at page three thereof, the said John Cook alleges: "That as a result of such declared and admitted independence, as I fully believe and now declare, it was in conformity with Presbyterian polity that the Synod or supreme court of said Church should act with perfect freedom, and as its own views of duty right dictate in the matter of Union with other Presbyterian bodies. And that by an overwhelming majority it did, after long deliberation and much pains taken to ascertain the feelings there-
20 anent of the great body of the congregations and members of the said Church, finally resolved to enter into such Union, it being a condition thereof, and stated expressly in the formal Act of Union that the united church should be considered identical with the Presbyterian Church of Canada in connection with the Church of Scotland, and should possess the same authority, rights, privileges and benefits to which that Church is now entitled."

23. The aforesaid ministers and elders of the said Church of Scotland, who on the eighteenth of May, aforesaid, withdrew to another place of meeting, there constituted themselves as the Free Church of Scotland, after having lodged a protest, in which they declared that they maintained the Confession of Faith and standards of the Church of Scotland, as more fully appears in said article, "The
30 Free Church of Scotland," in the same Cyclopædia, filed herewith.

26. On the eleventh of July, eighteen hundred and forty-three, a letter addressed to the Moderator of the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland, was presented to the said Synod then convened, as the supreme court of said Church, purporting to be from "the Committee of the General Assembly of the Free Church of Scotland on Colonial
40 Missions," to wit, the said ministers and elders of the said Church of Scotland who had seceded and withdrawn from the said last-mentioned church, on the eighteenth day of May, aforesaid, and had added the word "Free" to the original name, but, as they declared, without changing their doctrines and principles, as more fully appears by said minutes already filed at page twenty-five, of date, Toronto, eighteen hundred and forty-three.

27. In the month of May, eighteen hundred and forty-four, the aforesaid General Assembly of the Church of Scotland, convened in the city of Edinburgh, Scotland.

28. In the month of July, eighteen hundred and forty-four, the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland met as the supreme court of the said Church, in the city of Kingston, Upper

RECORD. Canada, as more fully appears by minutes of Synod filed, of date July, eighteen hundred and forty-four.

In the
Superior
Court.

No. 22.
Affidavit of
Douglas
Brymner,
filed 14th
March 1879
—continued.

29. On the sixth of said July, at the meeting of the said Synod, "The Committee on the Relations of this Synod, with the Church of Scotland, reported "a series of resolutions on this subject," and it was "moved by Mr. Bayne, "seconded by Mr. Gale, that the Synod adopt the following resolutions":

"Whereas, this Synod being fully informed of the disruption of the Established Church of Scotland, "to wit, the Church of Scotland, aforesaid," and having taken all the circumstances connected with that event into their deliberate and prayerful consideration, and having had special regard to its important bearing on the cause of Christ throughout the world, are deeply impressed with the obligations under which they are laid from having hitherto stood in a peculiarly close and friendly relation to the Established Church of Scotland, "to wit, the Church of Scotland, aforesaid," to make plain to the world the fact of their entire and unqualified independence, and to dissolve a connection which would imply that they sanctioned the principle and the procedure of the aforesaid Church, which have issued in her disruption" as more fully appears at page fifteen of said minutes filed, of date July, 1844.

30. At page twenty-second of said Synod minute filed, dated July 1844, it is recorded that "Dr. Mathieson gave in a protest signed by himself and certain other ministers and elders members of the Synod," that the said members in discussing said "Relations of the Synod of Canada with the Church of Scotland," should not be held as an admission that such discussion and decision were not in their nature objectionable or unconstitutional, or incompetent or *ultra vires*, or as compromising, or affecting injuriously their status, rights or privileges," as more fully appears at page fifteen of said minutes filed, dated July 1844.

31. On the said ninth of July the said minutes show that "the Synod having engaged in prayer for the Divine blessing and direction (Mr. Rintoul, on the call of the Moderator, conducting the exercise), the vote was then taken between Dr. Cook's motion and Mr. Baynes' amendment," to wit, the amendment referred to in paragraph twenty-nine of this affidavit, proposing to dissolve the connection with the said Church of Scotland, "when Dr. Cook's motion was accordingly declared to be carried," the said Dr. Cook being one of the Respondents and a deponent in this cause, and it further appears from said minute that Mr. Bayne, in his own name, and in the name of as many as should adhere to him, entered his dissent from the decision of the Synod, for reasons to be given in the following day, and it further appears from said minute, "that a separate paper was at the same time given in, subscribed by Mr. John M. Roger and Mr. William Reid, *ministers*, containing their reasons of dissent from the decision of the Synod," and it further appears from said minute, that on the tenth of July aforesaid, "Mr. Stark having demitted the office of Moderator, the Rev. John Cook, D.D., was unanimously chosen Moderator, and took the chair accordingly," the said "Rev. John Cook, D.D.," being one of the Respondents and a deponent in this cause, as more fully appears by said Synod minutes, filed at pages twenty-four, twenty-five and twenty-eight, of date July 1844.

32. A book, being an official and authentic "digest of the minutes of the Synod of the Presbyterian Church of Canada," has been filed in this cause, at

pages two to six of which are contained the "Protest of certain ministers and elders belonging to the Synod of Canada in connection with the Church of Scotland," and "Reasons of dissent and protest given in the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, by John Morrice Roger and William Reid, ministers, in regard to a decision of the Court, on the subject of the independence of the Court and its connection with the Church of Scotland," being the said protest and said paper recorded to have been given in by the said Bayne and the said Roger at page twenty of the said Synod minutes, filed (1844.)

RECORD.

*In the
Superior
Court.*

No. 22.
Affidavit of
Douglas
Brymner,
filed 14th
March 1879
—continued.

10 33. The said ministers and elders who had given in said protest and said paper, resolved to constitute themselves into a Synod, under the designation of the Synod of the Presbyterian Church of Canada, as more fully appears in said digest filed, and at page seven thereof.

34. The aforesaid Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, instructed their clerk to furnish Presbytery Clerks with the names of those ministers who had adhered to the dissent and protest given by Mr. Bayne, as more fully appears at pages thirty and thirty-one of said minutes, filed of date July, 1844.

20 35. The said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, received report of Presbyteries thereof, that they had declared certain ministers whose names appear in said minutes, to wit, the ministers who had withdrawn from said Synod, to be no longer ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, or of the Church of Scotland in Canada, and the said Synod instructed the clerk to intimate the same to the Governor General, as more fully appears at pages twenty and twenty-one of said minutes filed, dated September, eighteen hundred and forty-four.

30 36. The ministers and elders of the Presbyterian Church of Canada memorialised His Excellency the Governor General, in these words, to wit, "to decide
"whether or not in this position, (to wit, meaning as members of the said
"Presbyterian Church of Canada,) maintaining as they do, unchanged, their
"standards of doctrine, discipline, government and worship, Her Majesty's
"government will be disposed to continue those allowances enjoyed by some of
"their number," to which memorial a communication was received from the
Provincial Secretary Office, setting forth as follows: "that according to the
"opinion of the Law Officers of the Crown, said allowances could not be con-
"tinued on account of the new position in which the Synod stands," as more
fully appears from pages four hundred and eleven and four hundred and twelve
of said Digest filed.

40 37. The said Synod of the Presbyterian Church of Canada resolved to make certain alterations in the formula for the ordination of ministers, elders and deacons, which alterations constitute differences between the standards of doctrine, discipline, government and worship of the said last-mentioned Synod, and the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, as more fully appears from the said Digest filed at pages ten to thirteen.

38. The said Synod of the Presbyterian Church of Canada entered into

RECORD. negotiation with another ecclesiastical body, designated by the name of the United Presbyterian Church, holding standards of doctrine, discipline, government and worship, differing more widely from those held by the said Synod of the Presbyterian Church of Canada, than the said standards of the last-mentioned Synod do form the standards of the Synod in connection with the Church of Scotland, and after long negotiations and many compromises, the said Presbyterian Church of Canada and the said United Presbyterian Church, took to each other and united under the name of the Canada Presbyterian Church, as more fully appears in said Digest, filed at pages two hundred and eighty-two to three hundred and thirty-six.

—
In the
Superior
Court.
—
No. 22.
Affidavit of
Douglas
Brymner,
filed 14th
March 1879
—continued.

39. I produce and file an official and authentic copy of the "Acts and proceedings of the first General Assembly of the Presbyterian Church in Canada," to form part of the Record in this cause, marked EE.

40. Committees were appointed by the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, and the Presbyterian Church of Canada, to ascertain if arrangements could be made by which those who had withdrawn from the said Presbyterian Church of Canada in connection with the Church of Scotland, could re-unite with the same, but the feeling on the part of those who had so withdrawn that the act of spiritual independence passed by the Synod in connection with the Church of Scotland, was of no avail unless the real connection of that Synod with the Church of Scotland was abandoned, broke off negotiations.

41. In the year 1870 a letter signed by Mr. Armiston and addressed to the moderator of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, was produced and read by Reverend Dr. Jenkins, said letter asking for the appointment of a committee in regard to the incorporation of all Presbyterian churches in the Dominion under one General Assembly, which letter was referred to a committee, as appears more fully in pages 30 to 31 of Synod minutes for 1870, BBB.

42. In the year 1873, a report on the subject of Union with other Presbyterian bodies was discussed, certain measures proposed, and a protest entered against the proposed distribution of the Temporalities Fund, the subject of the present suit, as appears by said Synod minutes for 1873, BBB, page 35.

43. Reports of Presbyteries were made upon the subject of said Union to said Synod in Ottawa in the year 1874, certain motions were made and protests lodged against the legality and constitutionality of the proceedings, as appears by said Synod minutes, Ottawa, of 1874, BBB, pages 33, 34 and 35, and at the meeting of said Synod at Toronto in 1874, where it was resolved to enter in the Union. Protests were entered at every stage—Synod minutes, Toronto, 1874, BBB, pages 9, 14, 16.

44. In the year 1875, the proceedings of the said Synod, with regard to the said Union with other religious bodies not in communion with the Church of Scotland were protested against at every step—Minutes of Synod, 1875, BBB, pages 29, 30.

45. After the negotiations with the other religious bodies with which said Church in connection with the Church of Scotland had been closed and terms of

10

30

40

Union finally agreed on, a motion regulating the form of procedure to be adopted on the day appointed for the consummation of the Union was passed in the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, and there was appended thereto a clause declaring as follows: "The United Church shall be considered identical with the Presbyterian Church of Canada in connection with the Church of Scotland, and shall possess the same authority, rights, privileges and benefits to which this Church is now entitled." When the resolution was carried, the Rev. Robert Dobie, present Petitioner, and others dissented—Synod minutes of 1875, BBB, page 35.

10 46. That each of said uniting churches passed a resolution in which they each declared the United Church identical with their respective churches, which appears at page three and four of the official and authentic record of the acts and proceedings of the first General Assembly of the Presbyterian Church in Canada, now produced, shows.

47. Only a very few of the members adhering to Respondents, even assuming they had not seceded, have any claim upon the Temporalities Fund; for 108 of the present claimants thereon were not entitled to rank thereon previously to 14th June, 1875, but by the majority seceding were illegally and without any right or title added to the list of those entitled to claim upon said Fund just before the secession on the 15th June, 1875, to the great injury and deterioration of the said fund since last-mentioned date, as appears by said Synod minutes BBB, for the year 1870, at pages 24, 26, 41, 43; for the year 1871, at pages 24 and 26; for the year 1872 at pages 28, 29, 52 and 53, and the appendices of said minutes marked A1, and by the schedules thereto attached, marked "A1," "B" and "C," for the years 1869 to 1875, both inclusive; by the appendices B for the year 1870 to the year 1875, both inclusive; and by pages 143 and 144 of the "Historical and Statistical Report," published by order of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, which are filed herewith, the said report being marked "FF."

30

And I have signed,

DOUGLAS BRYMNER.

Sworn, before me, at Montreal, this fourteenth day of March, A.D., 1879.

ROBERT MOORE WATSON,

Comm'r of S. C., district of Montreal.

(Endorsed.)

Affidavit of Douglas Brymner—Filed 14th March, 1879.

(Paraphed) G. H. K., Depty. P. S. C.

RECORD.

In the
Superior
Court.

No. 22.
Affidavit of
Douglas
Brymner,
filed 14th
March 1879
—continued.

RECORD.

In the
Superior
Court.

No. 23.
Affidavit of
the Rev.
Robert
Dobie,
filed 14th
March 1879

Canada,
Province of Quebec, }
District of Montreal.

Schedule No. 25.

Superior Court, Montreal.

The Reverend Robert Dobie, - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.* - - - - - Respondents.

The Reverend Robert Dobie, of Milton, in the Province of Ontario, being 10
duly sworn, doth depose and say :

1. I have read over the printed petition herein from page one to page
twenty-two inclusive, and to the best of my knowledge and belief the matters
therein alleged as matters of fact are true.

2. Before coming as a minister to the heretofore Province of Lower Canada,
as my petition sets out, I was a duly appointed licentiate and clergyman of the
Church of Scotland, and eligible for presentation to any parish in Scotland and
to induction therein as a clergyman, and I am now a minister of the said Church
of Scotland.

I have read over the petition of the Respondents (except the Respondents 20
Sir Hugh Allan and the Reverend Gavin Lang, who acquiesce in the conclusions
of my petition), and observe that the said petition declares that :

" The said Dobie is not and never was a minister of the Church of Scot-
land," which averment is untrue.

I produce and file in support of my present affidavit, volume eight of the
Home and Foreign Missionary Record of the Church of Scotland, being the autho-
rised and authentic record of the proceedings of said Church, as Exhibit K. K.,
from page one hundred and forty-eight of which it appears, as the fact was, that
in the summer of 1852, and while I was resident in Scotland, John Cook, D.D.,
of Quebec, whose affidavit has been filed therein in support of the petition to dis- 30
solve or suspend the writ of injunction herein, and Dr. Alexander Mathieson, of
Montreal, went to Scotland with full powers from the Synod of the Presbyterian
Church of Canada in connection with the Church of Scotland, the Clergy Reserves
Commissioners and the Board of Trustees of Queen's College, to look out for suit-
able missionaries and ministers to send out to Canada, &c., &c.

" The following ministers having been selected and approved of by Doctors
Cook and Mathieson, were, with the concurrence of the Colonial Committee, ap-
pointed and sent out to Canada, namely :

1. Rev. George McDonnell.
2. Rev. Robert Dobie, (petitioner).
3. Rev. J. Morrison.
4. Rev. A. H. Milligan, of Wick.
5. Rev. Robert Burnet.

3. I am now and have been for about twenty-six years immediately last
past a minister of the Presbyterian Church of Canada in connection with the
Church of Scotland, and was moderator of the Synod thereof during the year
eighteen hundred and sixty-eight.

My rights upon the fund at present held by the corporation, Defendants, are **RECORD.** succinctly described in my petition herein filed.

4. Long prior to the commutation of the claims of ministers upon the funds resulting from the secularisation of the Clergy Reserves, referred to in the petition herein the said Presbyterian Church of Canada in connection with the Church of Scotland, and the ministers thereof frequently and on divers occasions avowed and declared their attachment to connection with and identity of standards with the Church of Scotland, in Scotland, and the said Presbyterian Church of Canada in connection with the Church of Scotland, expressly based their claim to participate in the lands reserved in Canada for the benefit of a "Protestant Clergy," and the proceeds thereof, upon the ground and consideration that the said Presbyterian Church of Canada in connection with the Church of Scotland was identical in standards and belief with the said Church of Scotland, and were, in fact, the Church of Scotland in Canada and maintained a connection therewith, and unless such connection had existed and the members of said Presbyterian Church of Canada in connection with the Church of Scotland had been able to satisfy the Government at that date that they were identical in character and standards with the said Church of Scotland, the said Presbyterian Church of Canada in connection with the Church of Scotland, and maintained their connection therewith, the adherents, ministers, missionaries and the members thereof would not have been entitled to participate in the sums of money resulting from the secularisation of the reserved lands.

5. That in or about the year eighteen hundred and forty-three, a secession took place from the Church of Scotland in Scotland, by certain ministers and others, who formed themselves in Scotland into a church usually designated the Free Church.

That the said secession was communicated to Church of Scotland in Canada, and in and about the year eighteen hundred and forty-four, certain ministers of the Presbyterian Church of Canada in connection with the Church of Scotland seceded from the said last-mentioned Church, and formed themselves into a distinct religious organisation, styling themselves the "Presbyterian Church of Canada," to wit, omitting the words, "in connection with the Church of Scotland," to mark that they had severed the connection with the Church of Scotland, which said last-mentioned seceding church is, and was, identical in its views with the Free Church of Scotland.

6. That shortly afterwards the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, being anxious to reconcile the difficulties that had arisen between their Synod and the said seceding body, and with a view to dispose of the objections which the said seceding body had to the well recognised connection of the said Presbyterian Church of Canada in connection with the Church of Scotland, made and passed a Declaratory Act, called the Act of Independence, being the same Declaratory Act referred to in the affidavits produced in support of Respondents' petition, expressing merely the spiritual independence of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, and its rights to control and govern in all spiritual and ecclesiastical matters within its own confines, which said Act was duly communicated to the said (Free Church) Presbyterian Church of Canada.

*In the
Superior
Court.*

No. 23.
Affidavit of
the Rev.
Robert
Dobie,
filed 14th
March 1879
—continued.

RECORD.

In the
Superior
Court.

No. 23.
Affidavit of
the Rev.
Robert
Dobie,
filed 14th
March 1879
—continued.

That deputations from the said two respective churches conferred for the purpose of effecting a re-union, but were unable to agree owing to the fact that the representatives of the Presbyterian Church of Canada in connection with the Church of Scotland insisted on the maintenance of the connection with the Church of Scotland, which appears, firstly, from the report made to the Committee of the Presbyterian Church of Canada in connection with the Church of Scotland, to its Synod in the month of July, eighteen hundred and forty-five., reported at page fourteen of the official minutes of the said session, as follows :

“ The Synod called for the report of the committee appointed at last meeting of Synod to negotiate on the subject of re-union with the seceding brethren, 10
“ which was given in and read by Mr. McGill, the Convener, stating that in
“ November last, they had a meeting with the committee appointed by the seceding Synod, and discussed several points connected with the subject of re-union,
“ but that the sentiments unequivocally expressed by the seceding brethren in
“ regard to the Church of Scotland were such that the committee concluded to
“ hold them as a bar to all negotiations, *in limine*, and thus the conference terminated.”

And secondly, by the report of the Committee on behalf of the Presbyterian Church of Canada, to wit, the said seceding body, reported at page two hundred and seventy-seven of the Digest of Synod minutes of the said 20
seceding body, as follows :

“ The Synod called for the report of the Committee appointed at last
“ meeting to meet with a Committee of the Synod of the Presbyterian
“ Church of Canada in connection with the Church of Scotland, and treat on
“ re-union with said Synod. Mr. Gale reported that the Committee had met
“ with the Reverend Robert McGill and the Honorable Justice McLean, the
“ Correspondent Committee of the Synod in connection with the Established
“ Church of Scotland, and had lengthened conference with them—that they
“ had found these gentlemen disposed to lay great stress on an Act passed
“ by their Synod, declaring the spiritual independence of their Church, but 30
“ entirely indisposed to entertain any proposal for dissolving the connection
“ between their Synod and the Scottish Establishment, or altering the designation of the Synod, and had thereupon broken off the conference.”

That moreover, in the month of September, eighteen hundred and forty-four, an official communication was presented to the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, from the Church of Scotland, and signed by Thomas Clark, sub-convener of the Colonial Committee of the said Church of Scotland, in which it was declared as follows :

“ We are not ignorant of the means that have been employed to entice the
“ people, among whom you labour, to leave your ministry ; of the efforts that have 40
“ been made to sow the seeds of dissension among yourselves ; and though these
“ endeavours have been attended with partial success, we yet rejoice to think
“ that so large majority of the office-bearers of your Synod and of your people
“ have resolved to maintain their connection and intercourse with the Church
“ of Scotland.”

That the said seceding ministers in Canada did form and constitute themselves into a Synod and Church organization, under the name of the Presbyte-

rian Church in Canada; and in the year eighteen hundred and forty-four did present to the Governor-General of Canada a memorial requesting a continuance of the allowances arising from the Clergy Reserves Fund, which they had enjoyed while they severally were ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and before they had severed their connection therewith, which said memorial was in the words following:

"The memorial of the ministers and elders of the Presbyterian Church of Canada in Synod assembled:

"Humbly sheweth that your memorialists at their first meeting in Kingston, in July last, informed Your Excellency of the painful but imperative necessity under which they felt themselves to be placed, of withdrawing from the Synod of the Presbyterian Church of Canada in connection with the Established Church of Scotland, and do now respectfully transmit to Your Excellency an authentic copy of the reasons of dissent and protest lodged by them with the said Synod at the period of their separation from that body.

"That your memorialists respectfully solicit Your Excellency's attention to this document in order that the position they now occupy may be distinctly understood, that Your Excellency having the whole merits of the case before you, may be able to decide whether or not in this position, maintaining as they do, unchanged, their standards of doctrine, discipline, government and worship, Her Majesty's Government will be disposed to continue those allowances from Government enjoyed by some of their number, and secured to them personally, they believe, by a late Imperial Statute, and which, indeed, some of them enjoyed before they were admitted into the Synod of the Presbyterian Church in connection with the Church of Scotland.

"May it, therefore, please Your Excellency to take the premises into consideration together with the accompanying reason of dissent and protest, and inform your memorialists as to the decision to which Your Excellency may come in regard to the allowances above referred to, and your memorialists, as in duty bound, will ever pray, &c.

"In name and by appointment of the Synod of the Presbyterian Church of Canada, at Toronto, this sixteenth day of October, eighteen hundred and forty-four.

"(Signed) MARK Y. STARK,

"Moderator."

which memorial was refused by His Excellency upon the advice of the Law Officers of the Crown; the moderator of the said Synod of the Presbyterian Church of Canada having reported thereto, in eighteen hundred and forty-five, that he had received a communication from the Provincial Secretary's Office in reply to the memorial from this Synod on the subject of the Government allowances enjoyed by some of the members up to the time of the formation of the Synod, which communication set forth that according to the opinion of the Law Officers of the Crown, said allowances could not be continued on account of the new position in which the Synod stand, as the whole will more fully appear from the authentic official Digest of minutes of the Presbyterian Church of Canada, at pages four hundred and eleven and four hundred and twelve thereof, which Digest is herewith filed as Petitioner Dobie's Exhibit LL.

RECORD.

In the
Superior
Court.

No. 23.

Affidavit of
the Rev.
Robert
Dobie,
filed 14th
March 1879
—continued.

RECORD.

*In the
Superior
Court.*

No. 23.
Affidavit of
the Rev.
Robert
Dobie,
filed 14th
March 1879
—continued.

That as a matter of fact all the proceeds of the said Clergy Reserves remained with and were continued to the said Presbyterian Church of Canada in connection with the Church of Scotland, and the ministers of the said seceding church by reason of such secession and altered position in their new church organization, lost all right and interest in the said Clergy Reserves and received nothing further therefrom by way of allowances or otherwise.

And deponent further avers that the fund constituted by the commutation of the claims of ministers upon the proceeds of the Clergy Reserves, was intended as a permanent endowment fund for the benefit of the said Presbyterian Church of Canada in connection with the Church of Scotland, and that the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland has not now and never had any rights of disposition over the same, at variance with the conditions of the creation of said fund.

That as more fully set out at page eight of Deponent's petition, the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, appointed commissioners with power and authority to act for the ministers having claims upon the Clergy Reserves Fund and to join all sums obtained by commutation of such claims upon said reserves into one fund, to be held by them until the next meeting of Synod by which all further regulations should be made, subject, however, to the following fundamental principle, which it was expressly therein declared it should not be competent for the Synod at any time to alter unless with the consent of the ministers granting such power and authority: that the interest of the fund shall be devoted, in the first instance, to the payment of one hundred and twelve pounds and ten shillings each, and that the next claim to be settled if the fund shall admit, and as soon as it shall admit of it, to the one hundred and twelve pounds and ten shillings, be that of the ministers now on the Synod's roll, and who have been put on the Synod's roll since the ninth of May, eighteen hundred and fifty-three; and also that it shall be considered a fundamental principle, that all persons who have a claim to such benefits, shall be ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and that they shall cease to have any claim on, or be entitled to any share of said commutation fund whenever they shall cease to be ministers in connection with said Church.

That by the conditions of the constitution of the said trusts, the said commissioners were authorized to procure an Act of incorporation for the management of the said fund, which they subsequently obtained, to wit, twenty-second Victoria, chapter sixty-six, which expressly constituted a Board to manage the whole of the said funds, "in trust," for the benefit of the Presbyterian Church of Canada in connection with the Church of Scotland; the terms of which trust the said Synod has not now and never had any power to alter or derogate from.

That it is untrue, as is falsely alleged in said petition, that about the year eighteen hundred and fifty-six, it was agreed by all of said ministers and by said Synod that the claims of all ministers on said fund should at their death revert to the said Synod, but on the contrary, it was agreed that the guaranteed salary of one hundred and twelve pounds and ten shillings devolving to each of the commutators should at his death revert, not to the Synod, but to the said fund, to

wit, the said permanent endowment fund for the said Church, as appears from the authentic minutes of the proceedings of the Synod of the said Church, page twenty-three, held at Kingston, on the thirty-first of May, eighteen hundred and fifty-six.

That it is untrue, as alleged in the said petition, that the said Synod has since eighteen hundred and fifty-six, up to the fifteenth day of June, eighteen hundred and seventy-five, with the consent of the said Deponent, controlled and administered the said fund through the said Board: that on the contrary, the said Board managed the said fund in accordance with the Act incorporating the same, and up to the said fifteenth of June administered the same, so far as Deponent is aware, in accordance with the conditions of the original trust and the objects of the incorporation of the said Board.

That any sums of money which the deponent may have withdrawn from the said corporation, Respondents, since the fifteenth day of June, eighteen hundred and seventy-five, he drew therefrom as a minister of the Presbyterian Church of Canada in connection with the Church of Scotland, and was entitled so to do in virtue of the Act of the heretofore Province of Canada (twenty-second Victoria) chapter sixty-six, and was entitled so to do under that Act and under the terms and conditions creating the said endowment fund held in trust by the said Board, Respondents: that those who seceded from the said Presbyterian Church of Canada in connection with the Church of Scotland, on the fifteenth day of June last, have adopted, with divers other Bodies the title and name of the Presbyterian Church in Canada, and the said seceders still, as deponent believes, without any lawful right, continue to withdraw their stipends and allowances from the said fund held by the corporation, Respondents, under the guise and name of ministers of Presbyterian Church of Canada in connection with the Church of Scotland.

That deponent and the other commuting ministers have never been indebted to the generosity of the said Synod for any allowance from the said fund or for any other cause whatever.

That deponent and divers others, on the fourteenth of June, eighteen hundred and seventy-five, in the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, entered a protest against the union of the said Presbyterian Church of Canada in connection with the Church of Scotland with the other Presbyterian bodies referred to in the said petition, and on the following day, the fifteenth of June, when the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland was assembled in St. Paul's Church, in the city of Montreal, where it had been regularly convened, the said Petitioner acting on behalf of himself and divers others, caused the Moderator of the said Synod and all the members thereof to be protested notorially by the ministry of Charles Cushing, Esquire (copy of which protest is herewith filed, attached to the present affidavit as Petitioner's Exhibit MM) against the formation of the said Union and against the said majority leaving the said St. Paul's Church and proceeding to the Victoria Skating Rink to consummate the Union referred to in the said petition, but notwithstanding such protest of the fourteenth of June and the protest of the fifteenth of June, and after due warning by the said Petitioner, the Rev. John Jenkins,

RECORD.

*In the
Superior
Court.*

No. 23.

Affidavit of
the Rev.
Robert
Dobie,
filed 14th
March 1879
—continued.

RECORD.

In the
Superior
Court.

No. 23.

As laid out
by the Rev.
Robert
Dobie,
filed 14th
March 1879
—continued.

the Rev. John Cook, the Rev. J. H. Mackerras and the Rev. Robert Campbell, deponents in support of the petition to quash the writ of injunction herein and divers others, then left the said St. Paul's Church and proceeded to another and separate building, to wit, the said Victoria Skating Rink, there to unite with the other bodies referred to, but this deponent and divers other ministers and elders of the said Presbyterian Church of Canada in connection with the Church of Scotland remained in the said St. Paul's Church, and there did continue the business of the said Synod, and did duly and legally close the same. And the said deponent and divers other ministers and elders of the said Presbyterian Church in connection with the Church of Scotland, have since the fifteenth day 10 of June, eighteen hundred and seventy-five, regularly continued to meet in Presbyteries and Synods, and to keep up and maintain, without organisation, the organisation of the said Presbyterian Church of Canada in connection with the Church of Scotland, which has an existence and a regular organisation, and constituted at this time in Canada.

That if twenty-seven of the original commutators of the said fund have given their consent to the disposition thereof contemplated by the Acts of the Local Legislatures, impugned in deponents petition herein, as alleged in Respondents petition, of which deponent is not aware, the same is unavailing, inasmuch as the said twenty-seven commutators by their severance of their connection with the 20 said Presbyterian Church of Canada in connection with the Church of Scotland ceased in accordance with the creation of the said fund (as set out on page eight of the deponent's petition herein) to have any claim thereon, or to have any share therein, or any right of administration or disposition thereof.

That as regards the allegation in the said petition that the said Board are now acting under the authority of the Legislatures of the Provinces of Quebec and Ontario, in the said Respondents petition recited, the said deponent says that the said Acts of the Province of Quebec have been impugned in his said petition herein as being illegal, unconstitutional and *ultra vires* the Legislature of the Province of Quebec, and that he has been advised by counsel, learned in the law, 30 that such is the case.

That deponent protested against the obtaining of the said legislation referred to in the said petition from the Local Legislatures, and at a meeting of Synod, to wit, the meeting held in Toronto in November, eighteen hundred and seventy-four, the deponent and divers others protested in a friendly way against the obtaining of the legislation and the effecting of the Union referred to, or even the discussion thereof.

That since the said fifteenth day of June eighteen hundred and seventy-five, the said Board, Respondents, have, so far as Deponent has been able to ascertain, deteriorated the capital sum to the extent of about forty thousand dollars, and 40 such deterioration resulted largely from the payment of divers large sums of money to persons not then entitled to participate therein and who would not have become entitled to participate in any benefits from said fund even had they remained in connection with the said Presbyterian Church of Canada in connection with the Church of Scotland, and deponent believes that the number who have been illegally allowed to participate in the benefits from said fund on and since the said 15th day of June, 1875 is about

That it is untrue that the said local acts guaranteed or secured anything to deponent that he was not entitled to under the Act 22 Vic., cap. 66,—and deponent does not base his rights to participate in the benefits derivable from the said fund upon the the said local Acts.

That it is untrue that the effect of the said injunction is to deprive ministers having claims upon said funds of any stipends to which they are legally entitled, inasmuch as only ministers who originally commuted were entitled to rank for allowances upon said fund and this by reason of their severance of their connection with the said Church having ceased, under the conditions constituted for said endowment fund, to participate in any benefit derivable therefrom. That furthermore, divers persons have illegally by the said Synod been permitted to rank against said Temporalities Fund who were not entitled on the fifteenth day of June, eighteen hundred and seventy-five, or since, to participate in any benefits derivable therefrom, but formerly derived their income from a fund called the Sustentation Fund, made up from collections taken up in the said Church by voluntary contributions and of any surplus revenues that might exist over and above the amount of the revenues derivable from the said Temporalities Fund necessary to pay the hereinbefore annual stipends of the commutators; but that illegally and without just cause the said claims on the Sustentation Fund have been transferred to and made claims upon the said Temporalities Fund since the fifteenth day of June eighteen hundred and seventy-five, and if the latter claimants, or any others, are subjected to any inconvenience by reason of the existence of the present injunction, the same is without any fault on the part of the Petitioner, who protested against the acts of the Respondents, and of the said Synod tending to consummate the said Union, from the outset.

That if any injury results to any person by reason of the existence of the present writ of injunction, of which the deponent is not aware, the deponent has given ample security therefor before this Honorable Court, and, furthermore, deponent declares his willingness to prosecute the present case to final determination, with all possible expedition, and to facilitate the decision of the matters in dispute between himself and the Respondents, with the least possible delay.

That the Rev. John Cook, the Rev. James C. Muir, and the Rev. George Bell did secede from the Presbyterian Church of Canada in connection with the Church of Scotland, on the fifteenth of June, eighteen hundred and seventy-five, and did join the Presbyterian Church of Canada, as more specially declared in deponent's petition therein.

That the resolution passed by the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, that the said united church should be identical with the Presbyterian Church of Canada in connection with the Church of Scotland, is a mere gloss and an attempt to transfer the rights, privileges, prerogatives and property of the said Presbyterian Church of Canada in connection with the Church of Scotland to another body, against which the deponent duly protested.

That each of the other united bodies did in their respective Synods declare that the said Presbyterian Church of Canada, to wit, the united church, should be identical with each of the other bodies respectively, and should be entitled to all the rights, privileges and prerogatives thereof. And deponent declares that

RECORD.

In the
Superior
Court.

No. 23.
Affidavit of
the Rev.
Robert
Dobie,
filed 14th
March 1879
—continued.

RECORD. it is impossible that the united church, created out of four different and distinct ecclesiastical organisations differing among themselves, could be identical with each of the four separate elements of which it was made up, and that, in fact, in order that the said Union could be effected there were concessions and compromises made in order to constitute a basis of Union which rendered it impossible that the united church could be identical in character with each of the four individual churches of which it was made up.

No. 23.
Affidavit of
the Rev.
Robert
Dobie,
filed 14th
March 1879
—continued.

That there has been and is no agreement or understanding between the Presbyterian Church of Canada in connection with the Church of Scotland and the three other bodies with which they united under the name of the Presbyterian Church of Canada, that these should be identical in standard, and that they should possess the same authority and attributes as the said Presbyterian Church of Canada.

That it is untrue that the sole interest which deponent has in the said funds is that he should be paid during his life the sum of one hundred and twelve pounds ten shillings per annum, as falsely alleged in the Respondents' petition, the said Dobie having renounced his rights to claim from the said Clergy Reserves the amount of the commutation money to which he was entitled, in consideration of forming and constituting a continuous and permanent Endowment Fund to the said Presbyterian Church of Canada in connection with the Church of Scotland, of which he is a minister, and which was a fundamental condition of his said renunciation; that in eighteen hundred and fifty-five the said deponent was entitled, personally, to receive a capital sum from which a revenue of six hundred dollars per annum was derivable, which capital sum, if it had been personally received by him, would have become his absolute property, subject to his administration, and would have been transmissible to his heirs, but the said Dobie renounced his rights of ownership therein, and contented himself with receiving, during life, a diminished revenue therefrom with a view to the perpetuation in Canada of the said Presbyterian Church of Canada in connection with the Church of Scotland, in which the said deponent as a Christian minister has a deep and lasting interest, and with whose interest the life of deponent has been identified for over a quarter of a century, and who desires to see it perpetuated. The inducement to deponent to renounce his personal rights to said commutation moneys are succinctly and clearly expressed in the third condition of the terms of the constitution of the said trust at page eight of my petition.

That moreover in the present action and proceeding the said deponent, though acting personally, is supported by the combined ministers and members of the Presbyterian Church of Canada in connection with the Church of Scotland, and the said action is entirely without malice on the part of the Petitioner, and altogether apart from a desire for personal pecuniary gain, but solely in order to secure the rights of the said Presbyterian Church of Canada in connection with the Church of Scotland, and for the ministers, members and adherents who adhere to the same in Canada.

That there are thousands of adherents to the said last-mentioned Church throughout the Province of Quebec and Ontario, many of whom are persons of

influence, and who anxiously desire to maintain the integrity of the said Presbyterian Church of Canada in connection with the Church of Scotland.

That the allegation in the affidavits of the Reverend John Jenkins and the Reverend — Campbell, in which they state as follows :

“ That according to the rules of procedure and polity of the said Presbyterian Church of Canada in connection with the Church of Scotland, the said Church always acted through its highest Court or Synod, and the voice of the majority voting in said Synod was always held to be the voice and findings of said Church in which the minority are bound to acquiesce, and the same rule applies in the other Presbyterian churches, namely, that the decision of the majority expressed in the highest Court binds the minority and the whole Church,” only refers to matters of routine and ordinary business, and not to matters affecting the very existence of the Church itself, its fundamental principles, and its entire property and assets.

That there never has been and is not any rule or practice in the said Presbyterian Church of Canada in connection with the Church of Scotland, or in the Synod thereof, or in the Church of Scotland itself, or in the General Assembly thereof, by which or under which the majority can, against the will of a resisting minority, bind the minority to abandon the Church to which it belongs, its ecclesiastical relationship, its peculiar principles, or to remove from the jurisdiction of the said minority still remaining in the said Church, and continuing as the said Church, the control of the property thereof, or to remove or divert from the said Church the entire property appertaining to and vested in trust in said Church for the benefit thereof.

And the said deponent specially declares that there is no rule or practice in the said Presbyterian Church of Canada in connection with the Church of Scotland, which could in any way bind the minority or enforce upon them the action of the pretended majority who left the said Church and joined with certain other bodies in the formation of the Church known as the Presbyterian Church in Canada.

And I have signed,

ROBERT DOBIE.

Sworn and acknowledged before me, at the city of Montreal, this thirteenth day of March, eighteen hundred and seventy-nine.

C. CUSHING,

Commissioner for the Superior Court of Lower Canada, district of Montreal.

Endorsed.

Affidavit of the Rev. Robert Dobie—Filed 14th March, 1879.

(Paraphed) G. H. K., Depy. P.S.C.

RECORD.

In the
Superior
Court.

No. 23.
Affidavit of
the Rev.
Robert
Dobie,
filed 14th
March 1879
—continued.

RECORD.

In the
Superior
Court.

No. 24.

Affidavit of
the Rev.
Robert
Burnet,
filed 14th
March 1879

Canada,
Province of Quebec, }
District of Montreal.

Schedule No. 26.

Superior Court, Montreal.

The Reverend Robert Dobie, - - - - - Petitioner.

vs.

"Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," - - - - - Respondents.

The Reverend Robert Burnet, of the city of London, in the Province of On- 10
tario, being duly sworn, doth depose and swear :

I am a minister of the Presbyterian Church of Canada in connection with
the Church of Scotland, and am also a licentiate and minister of the Church of
Scotland, in Scotland.

I have been a minister of the Presbyterian Church of Canada in connection
with the Church of Scotland for twenty-six years, and I am now and have been
since June eighteen hundred and seventy-five, the Clerk (or Secretary) of the
Synod of the Presbyterian Church of Canada in connection with the Church of
Scotland.

I know the Petitioner personally, and to my knowledge he does not act 20
from malicious motives in the present suit, but solely with a view to obtain jus-
tice. He has the united concurrence and support of the members of said Church
in the present suit.

To the best of my knowledge and belief the origin of the Endowment Fund
held by the said Corporation is correctly and truly set out in Petitioner's
petition herein ; and I firmly believe that it was owing to the connection of
said Church with the Church of Scotland, one of the Established Churches of
the United Kingdom, that the ministers of the said Presbyterian Church of
Canada in connection with the Church of Scotland were entitled and permit-
ted to participate in the Clergy Reserves and their proceeds. 30

The fund formed from the commutation of the claims of ministers on
the proceeds of the Clergy Reserves was intended as a permanent endow-
ment for the Presbyterian Church of Canada in connection with the Church
of Scotland ; and as such was in the nature of a trust fund specially devoted
to, and applicable for, the specific purpose for which it was created ; and as
such, inalienable and incapable of diversion to any other use or purpose.

The Synod of the said Church has no power to modify, relax or change the
conditions of said trust or endowment, which is entirely subject to the terms of
the resolutions and the consent and agreement by which it was created.

There is no power in the said Synod to affect the civil rights of individuals, 40
or to alter the terms of a trust fund.

The Presbyterian Church of Canada in connection with the Church of Scot-
land is still a regularly organised and existing church organisation with its
ministers and members as heretofore, adhering to the objects of its creation as a
Christian Church, and maintaining its connection with the Church of Scotland.

Said Presbyterian Church of Canada in connection with the Church of Scotland has no connection with the "Presbyterian Church in Canada."

To deponent's knowledge the said Presbyterian Church of Canada in connection with the Church of Scotland has thousands of devoted members and adherents in Canada.

ROBERT BURNET,
Clerk.

In the
Superior
Court.

No. 24.
Affidavit of
the Rev.
Robert
Burnet,
filed 14th
March 1879
—continued.

Sworn and acknowledged before me, at the city of London, this twenty-fifth day of March, 1879.

J. MANLY,

A Commissioner for taking affidavits in the Queen's Bench and Superior Court for the Province of Quebec.

(Endorsed.)

Affidavit of Rev. Robert Burnet—Filed 14th March, 1879.

(Paraphed) G. H. K., Depty. P.S.C.

Schedule No. 27.

Canada,
Province of Quebec,
District of Montreal.

Superior Court.

No. 25.
Affidavits of
the Rev.
Thomas
Macpherson,
and the
Rev. John
Davidson,
filed 14th
March 1879

The Reverend Robert Dobie, - - - - - Petitioner.
vs.

"Board for the Management of the Temporalities Fund of
the Presbyterian Church of Canada in connection with
the Church of Scotland," *et al.*, - - - Respondents.

The Reverend Thomas Macpherson, of Lancaster, in the Province of Ontario, and the Reverend John Davidson, of North Williamsburg, in the Province of Ontario, being each for himself severally sworn, do severally, and each for himself, depose and swear:

The said Reverend Thomas Macpherson, and the said Reverend John Davidson, that he is a member of the Church of Scotland, in Scotland, that he, said Thomas Macpherson, was duly ordained a minister of the Presbyterian Church of Canada in connection with the Church of Scotland in the year eighteen hundred and thirty-six, and has ever since continued a minister of said Church, and that he, the said Reverend John Davidson, was duly ordained a minister of the said Church in Canada during eighteen hundred and forty-four, and has ever since remained a minister of said Church.

That said Church in Canada is and was simply a branch of the Church of Scotland, and only was permitted to participate in the proceeds of the Clergy Reserve funds in consequence of being such branch. That in the year eighteen

RECORD. hundred and forty-four certain ministers of the said Church in Canada seceded and formed themselves into a church maintaining and professing to be identical in standards and forms of worship with the Church of Scotland, and took the name of the "Presbyterian Church of Canada," but said last-named ministers were thereafter deprived of, and, in 1845, declared by the then law officers of the Crown in Canada, incapable and ineligible to participate in the proceeds of the Clergy Reserves—the said seceders claimed their allowances—and the ministers of the said Church in Canada opposed the granting of the same by reason of their having severed their connection with the Church of Scotland in Canada.

—
In the
Superior
Court.
—
No. 25.
Affidavits of
the Rev.
Thomas
Macpherson,
and the
Rev. John
Davidson,
filed 14th
March 1879
—continued.

In 1855 the Deponent and the Petitioner and divers others being then entitled to participate personally in the proceeds of the Clergy Reserves, and each to receive a gross sum therefrom, renounced their right to the capital thereof, and accepted a reduced annuity therefrom in order to form a permanent endowment fund for the said Church in Canada for *all time to come*, and in order that said fund ought not in future to be diverted from its proper uses and obviety; and in order that it should be well understood, that if any subsequent secession should take place, the said fund should remain and continue with those who maintained their connection with the said Church in Canada, it was made a fundamental condition, which the Synod was for ever denied the power to alter, that any ministers, even a commutor, seceding from the same Church in Canada, should forever lose all right therein and cease to have any claim thereon whatever.

That the Reverend John Jenkins, John Cook, John H. Mackerras, Robert Campbell (and divers others who seceded with them) who have made affidavits in support of Respondents' petition, are all seceders from the said Church in Canada; even more so than were the said seceders in 1844, for the said seceders in 1844 still professed all the standards of the Church of Scotland in Scotland, except in connection therewith, to which they objected; but the said seceders of 1875, to wit, the said Jenkins, Cook, Campbell and others, have not only seceded from the said Church in Canada, but have joined other religious denominations which adhered to and professed different standards from the said Church in Canada, and notably have joined with and united with the heretofore Presbyterian Church of Canada, which united previously with another body and took the name and title of the "Canada Presbyterian Church," which latter church absorbed the seceders into it entirely, and merely adopted the gloss and fiction of changing the word "of" in its former title to "in." Moreover, the said Canada Presbyterian Church had not a single dissentient voice against the absorption of the said seceders and other Presbyterian bodies into it, but received them as an accrual to its strength, enacting, at the same time, that the United Church, the Presbyterian Church in Canada, should be the same and identical with the Canada Presbyterian Church, which in fact it is; but the said Canada Presbyterian Church differed widely in its pretensions, as a church, on material matters of doctrine and church government from the said Presbyterian Church of Canada in connection with the Church of Scotland; and notably the said Presbyterian Church of Canada in connection with the Church of Scotland accepted and now accepts the doctrines and teachings of said Church of Scotland as laid down in the Westminster Confession of faith; and a portion of the said Canadian Presbyterian Church always excepted to a portion of said doctrines,

and notably to the twenty-third chapter of said confession ; that said difference substantially amounted to this, that the Church of Scotland and the said Church of Canada in connection therewith have always recognized the powers of the civil magistrate in the State, in all matters, or, in other words, maintained the doctrine of a free Church in a free State ; whereas the said part of Canada Presbyterian Church referred to excepted to the power of the civil magistrate in spiritual affairs, recognized simply the Headship of Christ, or a *free Church above the State*.

That the said Presbyterian Church of Canada in connection with the Church of Scotland still adheres to the doctrines and teachings of said Confession of Faith as to the supremacy of the State in civil matters—but the said seceders have adopted the view of the said Canada Presbyterian Church, namely, supremacy of the Church in all matters—and have endeavoured by the resolution of Synod to ignore the civil rights of Petitioner, and to deprive him and all those who adhered to the Presbyterian Church of Canada in connection with the Church of Scotland as a Church of the benefits of the endowment created for said last named Church.

And deponent says he has read the printed petition of said Dobie, and that the matters therein alleged as matters of fact are true.

Deponent further says that he would never have commuted his claim on said fund but for the purpose of creating a permanent endowment for the said Church in Canada, in which deponent was brought up and inducted, to which he has given the best years of his life, and which by reason of the love he bears for it, and the zeal he has ever maintained in its service, he desires to see perpetuated for all time.

That to deponent's personal knowledge the said Petitioner is not animated by any sordid or malicious motives in the present suit—that he is acting as well personally—as with the united concurrence of all the members and ministers of the said Church and of the Synod thereof ; and the said deponents, each for himself, says also that said Church in Canada has thousands of adherents and members, comprising many of the most influential persons in the community, that it is in perfect organisation, that this deponent, John Davidson, is the Moderator of the Synod thereof, and that the said Synod is deeply injured by the Presbyterian Church of Canada in connection with the Church of Scotland being dispossessed of said fund, and therefore prevented from procuring and paying ministers and missionaries to teach and preach to the many devoted adherents of said Church in Canada, thousands of whom are without the ministration of religion and the benefits of its teachings in consequence of the acts of the Board Respondents and of Respondents personally.

That deponents, except from their reference to Respondents—the Respondents Sir Hugh Allan, Knight, and the Reverend Gavin Lang, members of the said Board—who for years have worked and are now zealously working for the said Presbyterian Church of Canada in connection with the Church of Scotland.

And deponent expressly declare that the said Synod has no power to make any disposition of said fund ; that the said Synod cannot and could not decide by a majority upon a matter affecting the property, rights and revenues of said Church ; that the same were only and solely under the management of the

RECORD.

*In the
Superior
Court.*

No. 25.
Affidavits of
the Rev.
Thomas
Macpherson,
and the
Rev. John
Davidson,
filed 14th
March 1879
—continued.

RECORD. Board Respondents, to be held and managed as trust funds for the objects specified, more particularly in the Petitioner's petition.

*In the
Superior
Court.*

And deponents have signed, and he acknowledges, each one for himself.

THOMAS MCPHERSON,
JOHN DAVIDSON.

No. 25.
Affidavits of
the Rev.
Thomas
Macpherson,
and the
Rev. John
Davidson,
filed 14th
March 1879
—continued.

Sworn to, and acknowledged before me, in Montreal, this thirteenth day of March, 1879, eighteen hundred and seventy-nine.

C. CUSHING,
Commissioner of the Superior Court, Lower Canada, in the District of
Montreal.

(Endorsed.)

Affidavits of the Reverend Thomas McPherson and the Reverend John Davidson—Filed 14th March, 1879.

(Paraphed) G. H. K., Depty. P. S. C.

No. 26.
Affidavit of
the Rev.
Gavin Lang,
filed 14th
March 1879

Canada,
Province of Quebec, }
District of Montreal.

Schedule No. 28.

Superior Court.

The Reverend Robert Dobie, - - - - - Petitioner.

vs.

"Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

Reverend Gavin Lang, now residing in the city of Montreal, being duly sworn, deposeth and saith:

I am now and have been for about fourteen years a minister of the Church of Scotland, having been licensed by the Presbytery of Kintyre, in Scotland, on the thirtieth day of November, eighteen hundred and sixty-four, and ordained by the Presbytery of Turriff, in Scotland, on the twentieth day of April, eighteen hundred and sixty-five.

I am the son of a clergyman who was for upwards of forty years a minister of the Church of Scotland, and, for the greater part of that period, minister of the parish of Glassford, in Scotland, and I have two brothers ministers of the Church of Scotland, the one being minister of the Barony parish of Glasgow, in Scotland, and the other, minister of the east parish of Farling, in Scotland.

In eighteen hundred and sixty-four I was presented by Colonel William Cosmo Gordon, of Fyvie (the patron), to the parish of Fyvie, in Scotland; and in eighteen hundred and seventy was translated, on presentation by the Right Honorable the Earl of Eglinton and Winton (the patron) to the parish of Glassford, in Scotland. I was thus about six years engaged as a minister in Scotland.

On the fourteenth day of April, eighteen hundred and seventy, at a meeting

of the committee appointed under "the Act of incorporation and by-laws of St. Andrew's Church, Montreal, for the purpose of obtaining a minister to supply the vacancy caused by the death of the late Rev. Alexander Mathieson, D.D." of which committee Mr. John L. Morris was secretary, it was resolved on motion of Dr. George W. Campbell, seconded by Mr. McDougall, "that this meeting requests the Rev. Drs. MacLeod, Macduff, and James A. Campbell, Esq., to select a clergyman, to wit, a clergyman of the Church of Scotland, in Scotland, for St. Andrew's Church, Montreal, giving them full power to make the appointment and guaranteeing the clergyman of that selection £700 per annum." Accordingly the said Reverend Dr. Norman MacLeod, Rev. Dr. Macduff and James A. Campbell, Esquire, offered me the presentation to the cure of said St. Andrew's Church, Montreal, which I accepted, and said presentation, under date eighth day of October, eighteen hundred and seventy, was laid before the Presbytery of Hamilton, in Scotland, within the bounds of which Presbytery my then parish of Glassford was situated, and I was translated by said Presbytery of Hamilton, in Scotland, to St. Andrew's Church, Montreal.

The papers presented to the Presbytery of Montreal in order to my induction into the charge of the said St. Andrew's Church, Montreal, were such as are usual in all processes of translation from one parish and Presbytery to another parish and Presbytery in Scotland, and such as had been presented on the occasion of my translation from the parish of Fyvie and the Presbytery of Turriff to the parish of Glassford, and the Presbytery of Hamilton, in Scotland; the said Presbytery of Hamilton, in Scotland, a Presbytery of the Church of Scotland, thus recognising the said Presbytery of Montreal under the jurisdiction of the Presbyterian Church of Canada in connection with the Church of Scotland, as a Presbytery of the branch Church of the Church of Scotland in Canada.

I have been since the twenty-eighth day of November, eighteen hundred and seventy, and am now minister of St. Andrew's Church, Montreal, and I solemnly declare that I would not have accepted the presentation to the said St. Andrew's Church, Montreal, except on representations, official or otherwise, that the said Church was in as close connection with the Church of Scotland as any under the jurisdiction of a branch of the Church of Scotland can be.

I have been since the twenty-eighth of November, eighteen hundred and seventy, and am now, a minister of the Presbyterian Church of Canada in connection with the Church of Scotland, and was the moderator of the Synod of the said Church in eighteen hundred and seventy-seven, said Synod being the Supreme Court of the said Church.

I claim to be well acquainted with the polity and procedure of the Church of Scotland, having been from early years, in virtue of baptism and participation in the Holy Communion of the other sacrament of the Lord's Supper, a member of the said Church, and in virtue of license or holy orders and induction into successively, two of her parishes in Scotland, a minister of the said Church, as also having been, while minister of one of the said parishes, on two different occasions, a member of the Venerable the General Assembly of the Church of Scotland, which General Assembly is the Supreme Court of said Church of Scotland, and holds its meetings in Edinburgh, Scotland, under the sanction of the Crown, imparted by the presence of a Lord High Commissioner, appointed to preside, in the name of the Sovereign, over its deliberations.

RECORD.

In the
Superior
Court.

No. 26.
Affidavit of
the Rev.
Gavin Lang,
filed 14th
March 1879
—continued.

RECORD.

*In the
Superior
Court.*

No. 26.
Affidavit of
the Rev.
Gavin Lang,
filed 14th
March 1879
—continued.

Every licentiate of the Church of Scotland is, in virtue of his license or orders, eligible to receive a presentation to any vacant parish or charge in connection with the Church of Scotland, and every Presbytery in said connection, is bound to induct such licentiate into such parish or charge to which he is lawfully presented, on being satisfied as to his character and attainments, as, for example, in the case of deponent, as hereinbefore recited, and also that of the Reverend John Cook, D.D., who, in his own sworn affidavit, deposeth and saith: "I am now and have been for upwards of forty-two years minister of St. Andrew's Church, in the said city of Quebec, having been ordained a minister of the Church of Scotland, and admitted to the charge of St. Andrew's Church, afore- 10
said, by the Presbytery of Dumbarton, in Scotland, in December, eighteen hundred and thirty-five."

No minister other than a licentiate having the orders of the Church of Scotland, can either be presented to or inducted into any parish in Scotland without previous admission, by special Act of the General Assembly or other duly authorised court of the Church of Scotland into the ranks of the ministry of the said Church of Scotland, as for example in the cases, amongst others, of (1.) the Reverend John Jenkins, D.D., who, in an application to the venerable the General Assembly of the Church of Scotland, of which application I have perfect cognisance, and in the promotion of which I took active interest, humbly prayed 20
that he might, by a special act of grace, be admitted and recognised as a minister of the said Church of Scotland. (2.) The Reverend Robert Laing (at the time assistant to the said Dr. Jenkins), who, in an exactly similar application, of which I also had and have perfect cognisance, and in the promotion of which I took active interest, likewise humbly prayed for a special act of admission into the ranks of the ministry of the said Church of Scotland, and (3.) the Reverend William M. Black, late of Montreal, and now of Anwoth, Scotland, who, not having been licensed in Scotland, and desiring to be ordained by one of the Presbyteries of the Church of Scotland, in Scotland, applied to the said General Assembly for permission to receive such ordination, all which applications, made 30
within the past eight years, the said General Assembly was graciously pleased to grant.

I have read carefully the sworn affidavit of the Reverend Robert Campbell, of Montreal, who cites, in connection with the reception by the said Church of Scotland of ministers from the "Presbyterian Church in Canada," the cases of the said Rev. William M. Black, and the Rev. Dr. William Snodgrass, as instances of the readiness with which the said Church of Scotland inducts such ministers from the said "Presbyterian Church in Canada," notwithstanding that these two ministers had taken a leading part in the movement which led to the formation of that new religious body, but the said Robert Campbell omits to say that both 40
the said ministers, whose cases he sets forth, were, and had been for some time before the formation of the said "Presbyterian Church in Canada," ministers fully recognised of the said Church of Scotland, and it is not true, but false, that the said Dr. William Snodgrass was ever deposed from the ministry by the Presbyterian Church of Canada in connection with the Church of Scotland, or that "an official announcement to that effect was ever sent, or authorised to be sent, by the said Presbyterian Church of Canada in connection with the Church of Scotland.

In the said affidavit of the said Robert Campbell, it is asserted that not only in the Presbyterian Church of Canada in connection with the Church of Scotland, but also in all other Presbyterian Churches the rule applies, "namely, that the decision of the majority expressed in the highest church court binds the minority and the whole Church." I solemnly declare that such assertion, as applied to the Church of Scotland, from which the Presbyterian Church of Canada in connection with the Church of Scotland sprung, and of which she is a branch, is utterly misleading, and where other than motions or resolutions or acts of a merely deliberative or routine character are concerned, untrue and false, as the

10 said Robert Campbell very well knows, in matters involving rights of property or the conditions of trusts, the constitution and principles of the Church, and not majorities as such, have always determined and decided all such questions as arise in relation to such matters. As, for example, in among others, the following well-known cases: (1.) the case of the Veto Act, passed by a majority in the General Assembly of the said Church of Scotland, in eighteen hundred and thirty-four, by a vote of one hundred and eighty-four against one hundred and thirty-nine, which Veto Act the civil courts, first the Court of Session in Scotland and finally the House of Lords, decided against the decision of the majority in the said General Assembly, was *ultra vires*. (2.) the case of the Presbytery of Strath-

20 bogie, in Scotland, who, acting upon an order passed by a majority of the said General Assembly, refused to take on trial or induct a licentiate, duly presented by the patron of the parish of Marnoch, within the bounds of the said Presbytery, were told by the Court of Session, in Scotland, that such order of Assembly was *ultra vires*, and enjoined to proceed with the trial and settlement of said presentee a case the more remarkable because, in compliance with the injunction of said Court of Session, the majority in said Presbytery of Strathbogie so complying were deposed from the office of the holy ministry by a majority of the ensuing next General Assembly, said deposition being in turn removed and annulled on appeal from the decision of the dominant majority, to the obligations

30 which the statutes establishing the Church imposed. (3.) the case of the law affecting Chapels of Ease or non-parochial churches, to the ministers of which, by an Act of the said General Assembly passed by a majority in eighteen hundred and thirty-four, a formal right had been given to sit in Presbyteries, Synods and Assemblies of the said Church of Scotland, but which, on the legality of said Act passed by said majority, being disputed by the parishioners of the parish of Stewarton, in Scotland, in the year eighteen hundred and thirty-nine, the Court of Session found to be unconstitutional and incompetent, and said Court of Session issued interdict accordingly.

I was a delegate, and the only delegate, appointed at the regular meeting of

40 the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, at Ottawa, in June, eighteen hundred and seventy-four, to represent the said Synod at the meeting of the Venerable the General Assembly of the Church of Scotland, held in Edinburgh, Scotland, in May, eighteen hundred and seventy-five, and accordingly appeared as said delegate at said General Assembly. On the same occasion and at the same General Assembly there appeared as a deputation appointed at an adjourned meeting of the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland, held in Toronto in November of the said year, eighteen hundred and seventy-four, the

RECORD.

In the
Superior
Court.

No. 26.
Affidavit of
the Rev.
Gavin Lang,
filed 14th
March 1879
—continued.

RECORD.

—
In the
Superior
Court.
—

No. 26.
Affidavit of
the Rev.
Gavin Lang,
filed 14th
March 1879
—continued.

Reverend John Cook, D.D., the Reverend J. H. Mackerras, Mr. James Croil, and others, who were charged to give the said General Assembly information as to a proposed Union between the said Presbyterian Church of Canada in connection with the Church of Scotland and divers other religious bodies in Canada of a Presbyterian persuasion. I solemnly declare that after I had addressed the said General Assembly as the delegate of the said Presbyterian Church of Canada in connection with the Church of Scotland, the said Reverend John Cook, D.D., Reverend J. H. Mackerras and Mr. James Croil, distinctly and deliberately asked and implored the said General Assembly, as the supreme court of their mother Church, to give an approval of said proposed Union, to which request the said General Assembly distinctly and deliberately declined its compliance, confining itself, after the declaration of its assurance that it would "continue to recognise all old relations with the brethren in Canada," to a conventional expression of "God-speed in their future labours for the Lord to brethren who propose to accept Union on that basis, or from co-operating with them in any way that may be found possible in the new state of things," in the which said expression of "God-speed in their future labours for the Lord," the deponent and the other "brethren in Canada of the Presbyterian Church of Canada in connection with the Church of Scotland also join.

Since eighteen hundred and seventy-five, I have been, and am now, convener of the committee of correspondence on behalf of the Presbyterian Church of Canada in connection with the Church of Scotland, with the Colonial Committee of the Church of Scotland, in Scotland, and, in such capacity, I hold regular communication with said Colonial Committee and, in one communication yearly, it is my duty to address a letter to the Venerable the General Assembly of the said Church of Scotland through the said Colonial Committee, which communication is printed in the annual report of the said Colonial Committee as the acknowledged greeting of the branch of the said Church of Scotland in Canada to the parent church. I received during the past year a grant of three hundred pounds sterling from the funds of the Colonial Committee of the said Church of Scotland to be applied to Home Mission work in connection with the Presbyterian Church of Canada in connection with the Church of Scotland.

I solemnly believe that no one is suffering by reason of the issue and existence of the said injunction against Respondents; that the Respondents on and previous to thirty-first day of December last past issued cheques to ministers for the payment of allowances and those who wished presented the same for payment and received payment, that the said petitioner has not presented his cheque for such payment, though deponent did under protest, that no additional payments or allowances will become due to ministers having claims on said Board until the month of July, eighteen hundred and seventy-nine.

And I have signed. GAVIN LANG. 40

Sworn and acknowledged before me, at Montreal, this fourteenth day of March, A. D. 1879. ROBT. MOORE WATSON,
Commissioner of the Superior Court for Lower Canada, in the district of Montreal.

(Endorsed.)

Affidavit of the Rev. Gavin Lang for petitioner Robert Dobie.—Filed 14th March, 1879. (Paraphed) G. H. K., Depy. P.S.C.

Schedule No. 29.

Canada,
Province of Quebec, }
District of Montreal.

Superior Court, Montreal.

The Reverend Robert Dobie, - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.* - - - - - Respondents.

RECORD.

In the
Superior
Court.

No. 27.
Affidavit of
Sir Hugh
Allan,
filed 14th
March 1879

10 Sir Hugh Allan, of the city and district of Montreal, Knight of Ravenscraig,
being duly sworn, doth depose and say :

1st. I am one of the Respondents.

2nd. I acquiesce in the proceedings instituted herein by the Petitioner.
Since the year eighteen hundred and seventy-five I have been elected to act on
said Board, without my consent, and have not participated since then in the
management thereof. I have been a member of the corporation, Respondents,
almost uninterruptedly since its formation in eighteen hundred and fifty-nine
until eighteen hundred and seventy-five, and for a large portion of such period I
was the Chairman thereof. Previously to the incorporation of the said Board,
20 Respondents, I was the Treasurer of the Fund of the Presbyterian Church of
Canada in connection with the Church of Scotland, resulting from the proceeds of
that portion of the Clergy Reserves which was assigned to said Church by the
Government, and I acted as one of the Commissioners to hold said fund in trust
until the incorporation of the Board, Respondents.

3rd. I am intimately acquainted with the affairs of the said Church in
Canada, and have given much time and attention to the obtaining and to the
preservation of the funds administered by the corporation, Respondents.

4th. The said Church was permitted to share in the proceeds of the said
Clergy Reserves by reason of their connection with, and their identity with the
30 Church of Scotland, without which qualification they would not have been
eligible to participate in the proceeds of the said Clergy Reserves.

5th. The fund held by me, as a Commissioner, with the other Commission-
ers, previous to the incorporation of the said Board, and which was subsequently
transferred to the Board, Respondents, to wit, the fund derived from the commu-
tation of the claims of the ministers upon the Clergy Reserves, was intended and
given as a permanent endowment for the said Church in connection with the
Church of Scotland, for all time to be held in trust for the objects of its creation
and for no other purpose whatever.

6th. I personally know that many of the ministers who commuted their
40 claims upon the said fund renounced their personal rights to participate in the
capital resulting from the sale and disposal of the Clergy Reserves, in considera-
tion of the fact that the monies renounced would be formed into a permanent
trust fund for the benefit of the said Church. From the reports of the proceed-
ings of the said Temporalities Board since eighteen hundred and seventy-five I
have no doubt that the said fund is being diverted from its original objects, and I
believe it to be in the interest of the Petitioner and of the said Presbyterian

RECORD. Church of Canada in connection with the Church of Scotland, and in the interest of justice, that the injunction issued against Respondents should be maintained until the final determination of the issues in this cause.

*In the
Superior
Court.*

No. 27.
Affidavit of
Sir Hugh
Allan,
filed 14th
March 1879
—continued.

7th. I believe that the Petitioner in this matter is in good faith, and that the object of the suit instituted by him is not for the purpose of malice or personal pecuniary gain, but as well in his personal interest as a commutor and minister of the said Church as in the interest of the said Presbyterian Church of Canada in connection with the Church of Scotland, and the maintenance of the conditions upon which he and others consented to the constitution of the said trust fund, namely, as a permanent endowment for the benefit of the said Presbyterian Church of Canada in connection with the Church of Scotland.

And I have signed.

HUGH ALLAN.

Sworn and acknowledged before me, at the city of Montreal, this fourteenth day of March, eighteen hundred and seventy-nine (1879).

ROBT. MOORE WATSON,

Commissioner of Superior Court of Lower Canada, for district of Montreal.

(Endorsed.)

Affidavit of Sir Hugh Allan—Filed 14th March, 1879.

(Paraphed) H. H. & G., P.S.C.

No. 28.
Affidavit of
Mr. Justice
Thomas
Miller,
filed 14th
March 1879

Schedule No. 30.

Canada,
Province of Quebec,
District of Montreal.

} No. 2100. Superior Court.

Reverend Robert Dobie,

- - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

Thomas Miller, of Milton, in the county of Halton, in the province of Ontario, being duly sworn, doth depose and say :

I am County Judge of the said county of Halton, and an elder of the Presbyterian Church of Canada in connection with the Church of Scotland, of which church I have been a member for twelve years.

I know the Petitioner personally, and to my knowledge he does not act from malicious motives in the present suit, but solely with a view to obtain justice. He has the united concurrence and support of the members of said Church in the present suit.

To the best of my knowledge and belief the origin of the endowment fund held by the said corporation, is correctly and truly set out in Petitioner's petition

herein; and I firmly believe that it was owing to the connection of said Church with the Church of Scotland, one of the Established Churches of the United Kingdom, that the ministers of the said Presbyterian Church of Canada in connection with the Church of Scotland, were entitled and permitted to participate in the "Clergy Reserves," and their proceeds.

The fund formed from the commutation of the claims of ministers on the proceeds of the Clergy Reserves, was intended as a permanent endowment for the Presbyterian Church of Canada in connection with the Church of Scotland, and as such was in the nature of a trust fund, specially devoted to and applicable for the specific purpose for which it was created, and as such inalienable, and incapable of diversion to any other use or purpose.

The Synod of the said Church has no power to modify, relax or change the conditions of said trust or endowment, which is entirely subject to the terms of the resolutions and the consent and agreement by which it was created.

There is no power in the said Synod to affect the civil rights of individuals, or to alter the terms of a trust fund.

The Presbyterian Church of Canada in connection with the Church of Scotland is still a regularly organized and existing church organization, with its ministers and members as heretofore, adhering to the objects of its creation as a Christian church and maintaining its connection with the Church of Scotland.

Said Presbyterian Church of Canada in connection with the Church of Scotland has no connection with the "Presbyterian Church in Canada."

To deponent's knowledge the said Presbyterian Church of Canada in connection with the Church of Scotland, has thousands of devoted members and adherents in Canada.

The effect of permitting the said endowment fund to pass under the control and operation of the corporation, Respondents, is the extinction of the said Presbyterian Church of Canada in connection with the Church of Scotland, after the death of the present ministers thereof.

The local legislation obtained, amending the Acts affecting the said Board, Respondents, make no provision for the continuance of said Presbyterian Church of Canada in connection with the Church of Scotland; but contemplate the ultimate diversion of said fund to "weak charges" in the (United Church) Presbyterian Church in Canada, and the administration of the fund by members of said united church, to the exclusion and disfranchisement of the members of said Presbyterian Church of Canada in connection with the Church of Scotland.

And I have signed.

THOMAS MILLER.

Sworn to and acknowledged before me, at Hamilton, this thirteenth day of March, eighteen hundred and seventy-nine.

J. S. SINCLAIR,

Judge of the County Court of the county of Wentworth, at Hamilton.

(Endorsed.)

Affidavit of Mr. Justice Miller—Filed 14th March, 1879.

(Paraphed) H. H. & G., P.S.C.

RECORD.

In the
Superior
Court.

No. 28.
Affidavit of
Mr. Justice
Thomas
Miller,
filed 14th
March 1879
—continued.

RECORD.

In the
Superior
Court.

No. 29.
Affidavit of
the Rev.
Robert
Campbell,
filed 25th
March 1879

Canada,
Province of Quebec, }
District of Montreal.

Schedule No. 31.

Superior Court.

The Rev. Robert Dobie, - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

I, Robert Campbell, of the city of Montreal, clergyman, being duly sworn 10
upon the Holy Evangelists, do make oath and say :

That I have taken cognizance of the affidavit of the Reverend Gavin Lang,
in which he avers that he was translated from the parish of Glassford, Scotland,
to the St. Andrew's Church, within the Presbytery of Montreal, in the year
eighteen hundred and seventy (1870) according to the same procedure as if he
had been translated from said parish of Glassford to a parish in Scotland, which
avermint I declare to be untrue, as a translation from one parish to another in
Scotland never takes place without what is termed "a call" from the parishioners,
sustained by the Presbytery within the bounds of which the parishioners calling
reside, and transmitted by them to the Presbytery to which the minister called 20
belongs—none of which steps were taken before Mr. Lang's so called translation
took place, which was no translation at all in the usual technical sense of that
word. I was moderator, that is presiding officer, of the Presbytery of Montreal,
at the date of Mr. Gavin Lang's induction to the St. Andrew's Church, Montreal,
and I do declare that Mr. Lang's induction was proceeded with just the same as
if he had come from the Presbyterian Church in Ireland, or any other Presby-
terian Church, as the process followed is substantially the same in all Presby-
terian Churches; and so, the conclusion to which he would bring the Court,
that because the same steps were taken as if he had been translated to a parish
in Scotland, therefore, the Presbyterian Church in Canada in connection with 30
the Church of Scotland, in eighteen hundred and seventy (1870) was part of the
Church of Scotland, would not be warranted by the premises, though the latter
were true, which I solemnly declare they are not.

That the said Reverend Gavin Lang assented to the Act of Independence of
the Presbyterian Church of Canada in connection with the Church of Scotland,
read to him by me as moderator of the Presbytery of Montreal, prior to his
induction on the twenty-eighth of November, eighteen hundred and seventy
(1870).

That I have paid particular attention to that part of the Reverend Gavin Lang's
deposition in which he calls in question certain declarations I made in an affidavit 40
before the Court, to the effect that by the Union of certain other Presbyterian
churches with the Presbyterian Church of Canada in connection with the Church
of Scotland, the relations of the latter to the Church of Scotland were no wise
altered from what they had been before said Union, the cases of the Reverend
Dr. Snodgrass and the Reverend W. M. Black being cited by me in proof. Mr.

Lang does not deny the truth of my declaration, but seeks to mislead the Court by affirming that these two gentlemen, Dr. Snodgrass and William M. Black, who have been admitted into parishes in Scotland, on the strength of certificates from Presbyteries of the United Church, were so admitted because they had been recognized as ministers by the Church of Scotland before the Union, the impression sought to be conveyed being, that there was a difference in this respect previous to the Union; whereas it was always the same, all ministers of the Presbyterian Church of Canada in connection with the Church of Scotland were not eligible for parishes in Scotland before the Union, but only those who were
 10 licensed by the Church of Scotland, or had their status recognized by that Church; so that I re-affirm my declaration that the Union has no wise affected the relations of those who formerly belonged to the Presbyterian Church of Canada in connection with the Church of Scotland, to the Church of Scotland.

That I solemnly declare my belief that the Church of Scotland does not recognize the Petitioner and the six other clergymen who, at the date of the Union were ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and are now in charges that, at that date, were connected with the Synod of said Church as a properly constituted church, since the Presbytery of Langholm, an integral portion of the Church of Scotland, refused to
 20 take cognizance of the act of deposition passed by the so called Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, or by the commission of said Synod, composed of the Petitioner and the deponents Reverend Gavin Lang, Reverend Thomas Macpherson, John Davidson, Douglas Brymner, Sir Hugh Allan and a few others, upon the Reverend Dr. Snodgrass, as would not have been the case, if the Church of Scotland recognized the Petitioner and his associates as a duly qualified Court. The deponent, the Reverend Gavin Lang, denies that sentence of deposition was passed by Petitioner and his associates upon Dr. Snodgrass, but I solemnly declare that I have seen a letter over the signature of Reverend Dr. Snodgrass, containing a copy of what purported to be an official
 30 communication to the Presbytery of Langholm, from the so called Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, signed "Robert Burnet, clerk"; that I saw it reported in the "Dumfries Courier and Gallway Advertiser" newspaper of Scotland, and that in a pamphlet entitled "A Flag of Distress," acknowledged to be written by one of the associates of the Petitioner, whom I verily believe to be the Reverend Robert Burnet, clerk of the so called Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, the fact of the deposition of Dr. Snodgrass and all other ministers who joined with him in the act of Union on the fifteenth of June, eighteen hundred and seventy-five (1875) is confessed and defended, Reverend Gavin
 40 Lang's denial to the contrary notwithstanding:—"There was presented through the Committee on Bills and Overtures an overture from the Presbytery of Glengarry, craving the Synod to call over the names of the ministers who have withdrawn from this Church, who joined the Presbyterian Church in Canada at the Victoria Skating Ring; to declare them to be no longer ministers of this Church and depose them from the office of the ministry, whereupon the Synod declared, as they hereby do declare, that these ministers who have joined the

RECORD.

*In the
Superior
Court.*

No. 29.
Affidavit of
the Rev.
Robert
Campbell,
filed 25th
March 1879
—continued.

RECORD. Presbyterian Church in Canada, thereby seceding from the Synod, viz.....
 ———
*In the
 Superior
 Court.*

No. 29.
 Affidavit of
 the Rev.
 Robert
 Campbell,
 filed 25th
 March 1879
 —continued.

are no longer ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, or of the Church of Scotland in Canada, and that they are hereby deposed from the ministry of said Church. Further, the Synod agree to record the expression of the grief of the members present at reading the names *seriatim*, and at declaring those who have seceded from our Churches no longer ministers thereof, in terms of Chapter VI, section I, of the Polity of this Church, and after the example of the Synod of 1844, chap. VI of cases without process.

"I. When an individual commits an offence in the presence of the Court or when he voluntarily confesses his guilt, it is competent to the court to proceed to 10 judgment without process, the offender having the privilege of being heard. The record must show the nature of the offence, the judgment of the court and the reasons thereof."

I have further taken cognizance of Reverend Gavin Lang's declaration, in which he calls in question an averment contained in my affidavit before the Court, that the fundamental principle of Presbyterian government is government by a majority, and that the minority are bound by the decision of the majority. Mr. Lang cites certain cases from the history of the Church of Scotland to controvert my declaration, but the cases mentioned by him do not, in the smallest degree, affect the truth of my averment. In those cases, 20 it was because the decisions of the majority contravened the law of the land, and were held by the Civil Courts to have violated the compact between the Church of Scotland, as by law established, and the State, that they were declared illegal; had there been no such contravention of law, the decision of the majority would have been binding on the minority. The same result would have followed though the Assembly had been unanimous, so that the mere fact of the decisions on those cases cited by Reverend Gavin Lang, being upset by the Civil Court in Scotland, no more affects the integrity of the principle of government by a majority than a reversal of a decision of a 30 majority of the Court of Appeal in the Province of Quebec, by the Supreme Court at Ottawa, on the ground that said decision was illegal, would affect the principle that a decision of a majority of the Judges is the decision of the Court.

That there is no risk of conflict between the State and the Presbyterian Church in Canada, which is the name by which the Presbyterian Church of Canada in connection with the Church of Scotland is known, since the fifteenth of June, eighteen hundred and seventy-five (1875), since the said Church was careful to procure from the several Legislatures having jurisdiction over the properties of said Church, prior to uniting to itself the other Presbyterian churches, the necessary sanction to such union, so far as the said Legislatures had a right 40 to be consulted, that is in the domain of property.

That I have further taken cognizance of the deposition of the Reverend Robert Dobie, Petitioner in the suit before the Court, and have paid special attention to that part of his deposition in which he declares that it was on the ground of its connection with the Established Church of Canada, that the ministers of the Presbyterian Church of Canada in connection with the Church of

Scotland were, in the year eighteen hundred and forty (1840), allowed a share in the revenue of the Clergy Reserves in Canada. I, on the contrary, affirm on my own knowledge, and from what I have learned from official documents, that it was on the ground that they were a Protestant clergy alone, that their claim to participate in that fund was conceded. Their connection with the Established Church of Scotland was only cited in proof of the fact that they were Protestant clergy, as the opinion of the law officers of the Crown, who reported as follows on the subject to the Imperial Parliament, in eighteen hundred and twenty-eight (1828), clearly shows "when your Lordships desire the judges to state if any other clergy (than the clergy of the Church of England) are included, what others, we answer that—it appears to us that the clergy of the Established Church of Scotland do constitute one instance of such other Protestant clergy. And although in answering your Lordship's question we specify no other Church than the Protestant Church of Scotland, we do not thereby intend that besides that Church the ministers of other churches may not be included under the term of "Protestant clergy." In accordance with this opinion the Imperial Parliament enacted that the Government should have the right to apply the proceeds of sale to any Protestant clergy, and the Wesleyan Methodists, who were not connected with any Established Church, afterwards shared in the proceeds of said sales.

20 That I have also given close attention to what the Reverend Robert Dobie has declared, citing Digest, page four hundred and eleven, as to the refusal of Her Majesty's Government to continue to grant the allowance which they had been previously in receipt of to those ministers who seceded in eighteen hundred and forty-four (1844) from the Presbyterian Church of Canada in connection with the Church of Scotland. I say that it was not because they ceased to be connected with an Established Church that they were then refused, but it was because giving it to them might oblige the Government to withhold it from those who should succeed to their places in the church which they had left, or else to give an allowance to two sets of men in each community. That it was not 30 because they ceased to be connected with an Established Church is manifest from the fact that in eighteen hundred and forty-eight (1848), as appears from the same Digest, page four hundred and thirteen, the then Government of Canada offered to admit the several religious bodies in the country to a share in the benefit of the Clergy Reserves, the Presbyterian ministers who had seceded among the rest.

That this question, however, is not one that bears on the petition before the Court at all, as the Temporalities Fund is a thing quite distinct from the Clergy Reserve Fund, and was created not by the Imperial Government, but by the ministers of the Presbyterian Church of Canada in connection with the Church 40 of Scotland, that held office in the Church in eighteen hundred and fifty-four (1854), and was intended to supply, in some measure, the place of the Clergy Reserve allowances which the ministers felt were unjustly to be done away with.

That as to what the Reverend Robert Dobie avers regarding the independence of the Presbyterian Church of Canada in connection with the Church of Scotland, that it is independent only "in spiritual" matters, thereby meaning to

RECORD.

*In the
Superior
Court.*

No. 29.
Affidavit of
the Rev.
Robert
Campbell,
filed 25th
March 1879
—continued.

RECORD. mislead the Court, as if in civil matters, it was not independent of the Church of Scotland, I affirm that ecclesiastical matters are the only things over which a Presbyterian Church in Canada has supreme jurisdiction; in all civil matters the Civil Courts alone are final arbiters.

In the
Superior
Court.

No. 29.
Affidavit of
the Rev.
Robert
Campbell,
filed 25th
March 1879
—continued.

That as to the case of "direct interference," cited by Douglas Brymner, as to be found on page thirty-three of the minutes of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, of the year eighteen hundred and forty-two (1842), the Court will not find the vestige of an interference direct or indirect, but in that and the following pages a most distinct and emphatic declaration of the independence of the Canadian Church is made. 10
The letter of the General Assembly cited contains an exhortation to activity, and such as one independent church might address to another.

That as to the Reverend Robert Dobie's declaration that he and his associates have continued to meet, to keep up and maintain the several Presbyteries of the Presbyterian Church of Canada in connection with the Church of Scotland, as they were before the Union, I declare that is impossible, as in many of the Presbyteries every member entered the United Church, and other Presbyteries adjourned before the Union either *sine die* or to meet at the call of their Moderators, and I solemnly declare that these Moderators have never since called meetings, and therefore those Presbyteries could not be continued. 20

That the Synod adjourned, as it had an undoubted right to do, to the Skating Rink, and was competent to discharge any business there that might arise as well as to consummate the Union, and so the minority had no right to remain behind; and even if the Synod had not been regularly constituted at the Skating Rink, the Petitioner and his associates could not "legally" constitute, as Petitioner avers they did, as it required fifteen members to form a legal Synod, and they numbered only nine.

And I have signed,

ROBERT CAMPBELL.

Sworn, taken and acknowledged before me, at the city of Montreal, this 30 nineteenth day of March, eighteen hundred and seventy-nine.

JOHN TAYLOR,

A Commissioner for the Superior Court, district of Montreal.

(Endorsed.)

Affidavit of the Reverend Robert Campbell—Filed 25th March, 1879.
(Paraphed) H. H. & G., P.S.C.

Schedule No. 32.

Canada,
Province of Quebec, }
District of Montreal.

Superior Court.

The Reverend Robert Dobie, - - - - - Petitioner.

vs.

"Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

RECORD.

In the
Superior
Court.

No. 30.
Affidavit of
James Croil,
filed 25th
March 1879

10 I, James Croil, of the city and district of Montreal, church agent, being duly sworn, depose and say :

That I have carefully perused the affidavit of the Reverend Gavin Lang, filed in this matter, dated the fourteenth day of March, eighteen hundred and seventy-nine, and that part of it wherein he deposed as follows : " And it is not true but false, that the said Dr. William Snodgrass was ever deposed from the ministry by the Presbyterian Church of Canada in connection with the Church of Scotland, or that an official announcement to that effect was ever sent, or authorised to be sent by the said Presbyterian Church of Canada in connection with the Church of Scotland."

20 That I verily believe the above quoted statement of the Reverend Gavin Lang to be untrue.

That in the year eighteen hundred and seventy-eight, a pamphlet was published and circulated by one of the associates of the Petitioner, the Reverend Robert Dobie, whom I verily believe to be the Reverend Robert Burnet, the clerk of the said Petitioner's pretended Synod, and wherein the deposition of the whole of the ministers who took part in the Presbyterian Union is admitted, and the following minute of said pretended Synod is quoted, to wit :—" There was presented through the Committee on Bills and Overtures an overture from the Presbytery of Glengarry, craving the Synod to call over the names of the ministers who have withdrawn from this Church, who joined the Presbyterian Church in Canada at the Victoria Skating Rink ; to declare them to be no longer ministers of this Church and depose them from the office of the ministry. Whereupon the Synod declared, as they hereby do declare, that these ministers who have joined the Presbyterian Church in Canada, thereby seceding from the Synod, viz..... are no longer ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, or of the Church of Scotland in Canada, and that they are hereby deposed from the ministry of said Church. Further, the Synod agree to record the expression of the grief of the members present at reading the names *seriatim*, and at declaring those who have seceded from our Church no longer
30 ministers thereof, in terms of Chapter VI, section I, of the Polity of this Church, and after the example of the Synod of 1844, chap. VI of cases without process.

40 " I. When an individual commits an offence in the presence of the Court, or when he voluntarily confesses his guilt, it is competent to the Court to proceed to judgment without process, the offender having the privilege of being heard. The record must show the nature of the offence, the judgment of the Court and the reasons thereof."

RECORD.

In the
Superior
Court.

No. 30.
Affidavit of
James Croil,
filed 25th
March 1879
—continued.

Further, the Reverend Dr. Snodgrass addressed a letter to me from Scotland, in which he stated that a communication had been received officially from the Reverend Robert Burnet, as such clerk, by the Presbytery of Langholm, in which it was stated that the Reverend Dr. Snodgrass had been deposed from the ministry.

I also cut the following paragraph from a Scotch paper, which confirms what I have stated, "The Presbytery of Langholm, on 6th November, in Canonbie Church: present Rev. Mr. Burnet (moderator), with Rev. Messrs. Smith, Mac-turk, Young, Noble and Dick. Mr. Smith was appointed moderator for the current half-year, and took the chair. Mr. Young was appointed as clerk *pro tem* 10 pore. Mr. Smith laid on the table a letter signed by Robert Burnet, clerk of Synod and Commission, in name and by authority of the "Commission of the Presbyterian Church of Canada in connection with the Church of Scotland," in which it was stated that Dr. Snodgrass had been deposed from the ministry. The ground of deposition was not very distinctly stated, but it appeared to have been the part which the Rev. Doctor had taken in connection with the recent union of the Presbyterian Churches of Canada, and the fact of his having joined the union church. The Presbytery unanimously pronounced the letter to be irregular, and several members expressed their decided disapprobation of the conduct of the so-called "Commission," in transmitting such a document, that body hav- 20 ing no power to depose an ordained minister of the Church of Scotland, even for a grave fault, much less for the offence alleged. It was remarked that the General Assembly had left its ministers perfectly free to act upon their own sense of duty in the matter of union. Mr. Burnet then conducted public worship, after which he delivered a most instructive and edifying discourse from Prov. xv. 15. A form of 'call' in favor of Dr. Snodgrass was then produced, read and signed."

And I have signed,

JAMES CROIL.

Sworn, taken and acknowledged before me, at the city of Montreal, this 30 twenty-fifth day of March, eighteen hundred and seventy-nine.

ANDREW J. SIMPSON,
A Commissioner for Superior Court, district of Montreal.

(Endorsed.)

Affidavit of James Croil—Filed 25th March, 1879.

(Paraphed) H. H. & G., P. S. C.

Schedule No. 33.

Canada,
Province of Quebec, }
District of Montreal.

Superior Court.

The Rev. Robert Dobie, - - - - - Petitioner.

vs.

"Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

10 The Reverend John Jenkins, of the city of Montreal, Doctor in Divinity, and
minister of St. Paul's Church, in the said city, being duly sworn upon the Holy
Evangelists, doth make oath and say :

I have carefully read over the affidavit of the Petitioner, the Reverend
Robert Dobie, and have given special attention to that portion of the affidavit
which professes to answer the charge which in a former affidavit of me, the afore-
said John Jenkins, was brought against the Petitioner Dobie, to wit, that he, the
said Dobie, came into your honorable Court with his petition on false pretences,
namely, that he professed to have been an "ordained missionary" of the
Church of Scotland, when he first came from Scotland to the city of Montreal,
20 in the year eighteen hundred and fifty-two. This averment of mine, the said
Dobie does not deny; but states on oath what is tantamount to his former pre-
tense, namely, that when he came to Canada he was a licentiate "and clergy-
man" of the aforesaid Church of Scotland, whereas, as the said Petitioner very
well knows, no man is "a clergyman" in the Church of Scotland, or in any other
church for that matter, until he has been solemnly set apart by the imposition of
hands, that is, ordained to the office of the holy ministry. The said Dobie was
a licentiate it is true, but a licentiate is to all intents and purposes a layman
until he is ordained as afore stated, and no licentiate is entitled to induction into
a parish or charge until after he has been examined as to his character and qual-
30 ifications by a Presbytery of the Church and his examination sustained as satis-
factory to the Court.

It is clear, therefore, that my statement made to your honorable Court in
regard to this matter of the ordination of the Reverend Robert Dobie is true,
and it is further true that as the said Dobie was not ordained to the office of the
holy ministry until the seventh day of October, eighteen hundred and fifty-
three, he comes into Court on a second false pretension, to wit, that he was a
clergyman of the Church of Scotland when he came to Montreal, and also on a
third false pretension, to wit, that he was and is a minister of the Church of
Scotland, which deponent again declares he never was, and is not now.

40 And deponent hath signed. JOHN JENKINS, D.D.

Sworn, taken and acknowledged at the city of Montreal, before me, this
eighteenth day of March, eighteen hundred and seventy-nine.

JOHN TAYLOR,

A Commissioner of the Superior Court for the district of Montreal.

(Endorsed.)

Affidavit of the Reverend John Jenkins, D.D.—Filed 4th April, 1879.

RECORD.

In the
Superior
Court.

No. 31.

Affidavit of
the Rev.
John
Jenkins,
D.D.,
filed 4th
April 1879

RECORD.

*In the
Superior
Court.*

Canada,
Province of Quebec, }
District of Montreal.

Schedule No. 34.

Superior Court.

The Revd Robert Dobie, - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," - - - - - Respondents.

No. 32.
Exception
to three
affidavits
filed by
Respondents
Filed 5th
April 1879.

The Petitioner excepts to the affidavits of James Croil, Reverend Dr. Jenkins 10
and Reverend Robert Campbell, filed after the completion of the issue on the
writ of injunction, as sur-rebuttal evidence; the case having been completed by
the affidavits first filed in support of the petition—by the affidavits in such part
of the petition to quash—and the affidavit and exhibits filed in support of the
answer thereto—there being no replication to Petitioner's answer, and said three
affidavits having been filed without consent and under objection thereto made
at argument and now formally hereby renewed.

Montreal, 5th April, 1879.

MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioner. 20

(Endorsed.)

Exception to three affidavits filed by Respondents—Filed 5th April, 1879.
(Paraphed) E. D., Dep. P.S.C.

Schedule No. 35.

No. 33.
Plea,
filed 11th
March 1879

Canada,
Province of Quebec, }
District of Montreal.

Superior Court.

The Reverend Robert Dobie, - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of
the Presbyterian Church of Canada in connection with
the Church of Scotland," *et al.*, - - - - - Respondents. 30

And the said Respondents, the " Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," the Rev. Daniel M. Gordon, the Rev. John Cook, the Rev. John Jenkins, John L. Morris, Robert Dennistoun, William Walker, the Rev. John H. Mackerras, William Darling, Alexander Mitchell, for plea to the Petitioner's action and demand, say :

That the said Reverend Robert Dobie's statement as contained in his petition in this matter, to wit, that he the said Dobie, when he came to Canada in the year eighteen hundred and fifty-two, was "an ordained missionary of the Church of Scotland" is not true, as said Dobie's ordination took place in Canada, and then not until the seventh day of October, eighteen hundred and fifty-three, on which day the Presbytery of Glengarry did ordain the said Dobie as minister of Osnabrock, in the now Province of Ontario.

That it is not true that the said Dobie, as the said Dobie avers, in his petition aforesaid, is or ever was a "minister of the Church of Scotland," he
 10 having been merely licentiate of said Church, which according to the polity of said Church, as he the said Dobie very well knows, is a position different from, and altogether inferior to that position which is held in said Church by an ordained minister.

That the Church formerly called the Presbyterian Church of Canada in connection with the Church of Scotland was, from its commencement, an independent body and a voluntary association, and was admitted to be so by the said Church of Scotland, in Scotland, in a letter from its Colonial Committee, addressed in the year eighteen hundred and forty-four to the Moderator and members of the said Presbyterian Church of Canada in connection with the Church of
 20 Scotland, which expressly states that "the Church of Scotland has never claimed any authority nor exercised any control over your Synod, neither has she ever possessed, nor desires to possess, the right of any such interference."

That in the month of September, eighteen hundred and forty-four, the Synod being the supreme and highest Court and authority of said "Presbyterian Church of Canada in connection with the Church of Scotland," passed and adopted a Declaratory Act, declaring that said Synod had always possessed, and then possessed and exercised, a perfectly free, full, final, supreme and uncontrolled power of jurisdiction, discipline and judgment over said Church and over all congregations and ministers in connection therewith without the right of review, appeal
 30 or complaint, or reference to any other Court, and that the words in connection with the Church of Scotland implied no right of jurisdiction or control in any form whatsoever by the said Church of Scotland over said Synod, but denoted merely the connection of origin and identity of standards and ministerial and church communion.

That said supreme and free jurisdiction was a fundamental and essential part of the constitution of the said Synod and Church, and all ministers and probationers for ordination or induction into any pastoral charge were required to give their assent to said Declaratory Act of Independence, as did the Petitioner, on the seventh day of October, eighteen hundred and fifty-three, when he was
 40 ordained to the office of the ministry by the Presbytery of Glengarry.

That the commutation of the claims of ministers on the Clergy Reserve Fund, referred to in said Dobie's petition, was negotiated and carried out by His Excellency the Governor-General of Canada in Council on the one part, and Commissioners appointed by the said Synod to represent it on the other part, and in the treaty respecting the said commutation it was distinctly stipulated and agreed between the said parties that the said commutation should be negotiated

RECORD.

In the
 Superior
 Court.

No. 33.

Plea,
 filed 11th
 March 1879
 —continued.

RECORD. and carried out with the Synod of the said Church as a body and not with individual ministers of the said Church, and His Excellency the Governor in Council declined to make commutation with individual ministers of the said Church although in two cases he was petitioned so to do.

*In the
Superior
Court.*

No. 33.
Plea,
filed 11th
March 1879
—continued.

That as stated in Petitioner's petition he and others did renounce their claims on said Clergy Reserve Fund, and authorised said Synod to receive and retain the commutation money from the Government, upon two conditions only, to wit:

First, that the interest of the fund should be devoted, in the first instance, to the payment of salaries of (£112 10s.) one hundred and twelve pounds ten shillings each per annum to the ministers granting the power and authority to make such commutation; and secondly, that the next claim on the Fund should be that of ministers on the Roll of the Synod, and who had been put on the Synod's Roll since the ninth of May, eighteen hundred and fifty-three.

That the amount received by the said Synod as and for the said commutation allowance was (£127,327 16s. 4d.) one hundred and twenty-seven thousand three hundred and twenty-seven pounds sixteen shillings and fourpence.

That the number of ministers who then had claims upon the said fund and who commuted the same was (73) seventy-three; and it was then agreed by the members of the said Synod that the said sum of money should be, and it was, funded for the benefit of the said Church, and that the only right and interest therein of each of the said ministers should be to receive a certain annuity therefrom during his lifetime, and that subject to such right the said fund should be and remain a common fund for the use of the said Church and under the control of the said Synod.

That subsequently, in the years (1857 and 1858) eighteen hundred and fifty-seven and eighteen hundred and fifty-eight, the said Synod caused proceedings to be taken whereby they obtained the passing of the Statute of the late Province of Canada, (22nd) twenty-second Victoria, chapter (66) sixty-six, for the management of the said fund, and ever since that time "The Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," constituted by said Act, have with the consent and approval of the said Synod, administered said fund, subject to the jurisdiction and control of said Synod, who have always, with the consent of said Dobie, and all others concerned, claimed and exercised absolute power over said fund as the legal owners thereof. That the said Act of Incorporation of the said Board was amended by thirty-second Victoria, chapter seventy-six of the Legislature of the Province of Quebec, with the approval of said Synod, of which said Petitioner was also a member, and the said Board have since said amendment been continuously acting thereunder by and with the approbation of said Church and Synod and of said Dobie.

That the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, after about five years deliberation, in which the petitioner, the Reverend Robert Dobie, took part, and to which and in which deliberation the said Dobie took no formal objection during the first three years of the said five, did by a solemn and almost unanimous vote, as it had the right to do, being

the supreme and ultimate Court of the said Church, agree to form a Union with all the Presbyterian Churches in Canada, to wit, with the Canada Presbyterian Church, the Presbyterian Church of the Lower Provinces, and the Presbyterian Church of the Maritime Provinces in connection with the Church of Scotland, and with a view to the disposition and management of the funds and property of said Church after such union, and with the view of guaranteeing to all legal claimants upon said funds their just rights, did apply for and secure from the Legislature of this Province, to wit, that of Quebec, the Act (38) thirty-eighth Victoria, chapter (64) sixty-four, assented to on the (23rd) twenty-third of February, (1875) eighteen hundred and seventy-five, intituled "An Act to Amend the Act intituled an Act to Incorporate the Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," and the Act of said Legislature, thirty-eighth Victoria, chapter (72) seventy-two, assented to on the twenty-third of February, eighteen hundred and seventy-five, intituled "An Act respecting the Union of certain Presbyterian Churches therein named," and also the Act of the Legislature of the Province of Ontario (38th) thirty-eighth Victoria, chapter (75) seventy-five.

That since the said fifteenth day of June, eighteen hundred and seventy-five, the Defendants have been managing and administering the said fund, under the authority of and as directed by the said Synod, and under the authority of the said Acts.

That on said fifteenth day of June, eighteen hundred and seventy-five, and while the said Synod was still in session at the city of Montreal, the said petitioner, Dobie, and nine others seceded from said Church and Synod and attempted illegally and unconstitutionally to form a new Synod and Church of their own, and for that purpose met and went through the form of constituting themselves as a Synod, but as they had not present fifteen members, the number required by Presbyterian polity and procedure to form and constitute a Synod, they failed to make or hold a Synod, but they succeeded in seceding and severing themselves from said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland.

That after the said Dobie and nine others had so seceded, as aforesaid, from said Synod, and in order to carry out the resolution of the said Synod above recited to form a Union with all the Presbyterian Churches in Canada, and consistently with its admitted and declared independence and in conformity with Presbyterian polity that the Synod or supreme Court of said Church should act with perfect freedom, and as its own views of duty might dictate in the matter of said Union, the said Church legally and constitutionally and acting by the authority of said Synod and through said Synod and by the authority of the said Acts above cited, so obtained by said Synod, joined to itself and united with the other Presbyterian Churches above-named, merely changing its name to "the Presbyterian Church in Canada," omitting the words "in connection with the Church of Scotland."

That it was a condition of such Union and expressly stated in the formal Act of said Union, that the United Church should be considered "identical with

RECORD.

—
In the
Superior
Court.
—

No. 33.

Plea,
filed 11th
March 1879
—continued.

RECORD. the Presbyterian Church of Canada in connection with the Church of Scotland, and should possess the same authority, rights, privileges and benefits to which that Church is now entitled."

*In the
Superior
Court.*

No. 33.
Plea,
filed 11th
March 1879
—continued.

And the said Presbyterian Church of Canada in connection with the Church of Scotland, now exists under the name of "The Presbyterian Church in Canada," and retains all its property (including the said Temporalities Fund), rights and privileges which it formerly held and enjoyed under the name of the Presbyterian Church of Canada in connection with the Church of Scotland, and its ministerial and church communion with said Church of Scotland have not ceased. The same standards are still recognized and there is the same ministerial and church communion. The said United Church, to wit, the Presbyterian Church in Canada, receives members and ministers of the Church of Scotland, and the Church of Scotland receives members and ministers who formerly belonged to the said Synod and who went into the union in the same way, and to the same extent, as it did before the union. Witness the reception of the Reverend William Black, late of the city of Montreal, and of the Reverend Dr. Snodgrass, by Presbyteries of said Church of Scotland as ministers of parishes in the said Church, the reception of the latter, namely, the Reverend Dr. Snodgrass, being the more remarkable as it was in utter disregard of an official announcement from the said Dobie's pretended Church of Canada in connection with the Church of Scotland, that it had deposed the said Dr. Snodgrass from the ministry.

That as a result of such secession from said Church and Synod by the said Dobie he would have lost all claim upon the said fund, if the said Synod, previous to said union (with a view to acting generously to said Dobie and any others who did not wish to remain in said Church after said Union) had not by formal resolution provided that any person refusing to take part in said Union should continue to have the same claim upon said fund as if he had entered in said Union, and if the said Synod had not obtained the passing of the said Acts which guarantee to the said Dobie and all others his and their claim upon said fund.

That the only interest which the said Dobie has in said fund is to be paid the annual stipend of (\$450.00) four hundred and fifty dollars, during his lifetime, or so long as he shall retain the position of a Presbyterian clergyman in Canada.

That this is secured to him, as specially provided by resolution of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, and by the Acts above recited.

That the Respondents have always faithfully and honestly administered said fund as directed by said resolution and Acts and have always paid to the said Dobie his half-yearly stipend from said fund when due.

That said Dobie has since the said union frequently recognized the validity of the constitution of said Board and of said Acts by accepting from said Board as at present constituted, his half-yearly stipends of (\$225.00) two hundred and twenty-five dollars each, from said fund, and has also, without protest or taking any proceedings until last May, allowed said Board since said fifteenth of June, eighteen hundred and seventy-five, to act and administer said fund as they are now administering it.

That the Respondents have not infringed upon the capital of said fund so

as to endanger in any way the personal interest of said Dobie, which capitalized would amount to less than (\$6,500.00) six thousand five hundred dollars, but on the contrary, the said Respondents have always declared and now declare that no consideration or circumstances shall at any time induce them so to administer the said fund as to imperil the interests of said Dobie or of any other surviving commuting minister having a claim on said fund.

That in this case the said Dobie does not pretend to represent any person but himself, but has instituted proceedings in his own personal capacities.

That inasmuch as the said Dobie has seceded from said Church as aforesaid, and as by resolution of said Synod the said Respondents are administering said fund so as to protect said Dobie's claim, the said Dobie has no right or interest to attack the constitutionality of the said Acts of the Legislature of the Province of Quebec or to call in question the right of the Respondents, the members of said Board, to act as such and to administer the said fund.

That the domicile of the said Board, Respondents, and their place of business is and always has been in the city of Montreal, in the Province of Quebec, and the whole of the funds administered by the said Board are and always have been invested in the Province of Quebec.

That therefore the said fund and property of said Board being within this Province, are and always were subject to the Legislature of this Province.

That in any case the said Dobie has no right to complain of the said Acts as his rights or claim upon said fund is not taken away, but on the contrary, is expressly preserved by said Acts.

That further, all persons having any claim upon the said fund are resident either in the Province of Quebec or of Ontario; and as before stated, the said Act was passed in the Province of Ontario, and the said Dobie and those resident in Ontario are bound by the said Ontario Act.

That the said Acts, both of the Province of Quebec and of Ontario, are legal and constitutional, and within the competency of said Legislatures.

That the allegations of the said Dobie in his said petition concerning the Rev. John Cook, the Rev. James C. Muir, the Rev. George Bell, the Rev. John Fairlie, the Rev. David W. Morison, and the Rev. Charles A. Tanner, are irrelevant and illegal, and do not concern the said Dobie, who has only a right to attend to his own interests.

That of the original seventy-three ministers who commuted their claims as aforesaid, forty have departed this life, and all their rights terminated at the time of their death. That only thirty-three of said original commuting ministers remain, and twenty-seven of these have approved of said Union, and of said resolution of said Synod and of said Acts of said Legislature, and of the present constitution of said Board, and the present administration by it of said fund.

That there are, therefore, only six of said original commuting ministers who have not continued with their said Church in said Union, and who have seceded from said Church, and as before stated their claims are carefully preserved by said Acts and resolution of said Synod.

Wherefore the said Respondent pray that the Petitioner's action and

RECORD.

In the
Superior
Court.

No. 33.

Plea,
filed 11th
March 1879
—continued.

RECORD. *demande* may be hence dismissed with costs *distracts* to the undersigned attorney.

In the
Superior
Court.

Montreal, 10th March, 1879.

JOHN L. MORRIS,
Attorney for said Respondents,
except the Reverend Gavin Lang and Sir Hugh Allan.

No. 33.
Plea,
filed 11th
March 1879
—continued.

And the said Respondents the "Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," the Rev. Daniel M. Gordon, the Rev. John Cook, the Rev. John Jenkins, John L. Morris, Robert Dennistoun, William Walker, the Rev. John H. Mackerras, William Darling and Alexander Mitchell, without waiver of the foregoing plea, but on the contrary, reserving to themselves the benefit thereof for plea, *défense au fonds en fait* to the Petitioner's action and demand, say :

That all, each and every of the allegations, matters and things contained in the Petitioner's petition in this cause filed are false, untrue, and unfounded in fact, and are hereby specially and expressly denied.

Wherefore, the said Respondents pray that the Petitioner's action and *demande* may be hence dismissed with costs *distracts* to the undersigned attorney.
Montreal, 10th March, 1879.

20

JOHN L. MORRIS,
Attorney for said Respondents,
except the Reverend Gavin Lang and Sir Hugh Allan.

(Received Copy.)

MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioner.

(Endorsed.)

Plea - Filed 11th March, 1879.

(Paraphed) H. H. & G., P.S.C.

No. 34.
Declaration
of the Rev.
Gavin Lang,
filed 8th
March 1879

Canada,
Province of Quebec, }
District of Montreal. }

Schedule No. 36.

Superior Court.

30

Reverend Robert Dobie, - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," - - - - - Respondents.

The Respondent, the Reverend Gavin Lang, minister of St. Andrew's Church, Montreal, one of the said individual Respondents, and a member of the

corporation Respondents, hereby declares: That he acquiesces in the pretensions of the Petitioner. That, further, it is in the interest of the lawful claimants of funds heretofore administered by the said Corporation, that the Injunction herein made should be continued. That in all matters this Respondent has acted in good faith, and he abides the order and judgment of the Court herein.

Montreal, 5th March, 1879.

D. E. BOWIE,
Attorney for Respondent Reverend Gavin Lang.

(Duly received Copy.)

10 MACMASTER, HALL & GREENSHIELDS,
Attys for Petitioner.

(Endorsed.)

Declaration of the Reverend Gavin Lang—Filed 8th March, 1879.
(Paraphed) H. H. & G., P.S.C.

RECORD.

*In the
Superior
Court.*

No. 34.
Declaration
of the Rev.
Gavin Lang,
filed 8th
March 1879
—continued.

Schedule No. 37.

Canada,
Province of Quebec, }
District of Montreal.

Superior Court.

20 The Reverend Robert Dobie, - - - - - Petitioner.
vs.

“ Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland,” - - - - - Respondents.

The Respondent, Sir Hugh Allan, Knight, of Ravenscraig, one of the said individual Respondents and a member of the corporation, Respondents, hereby declares: That he acquiesces in the pretensions of the Petitioner. That, further, it is in the interest of the lawful claimants of Funds heretofore administered by the said corporation that the Injunction herein made should be continued. That in all matters this Respondent has acted in good faith, and he abides the order and judgment of the Court herein.

Montreal, 5th March, 1879.

D. E. BOWIE,
Attorney for Respondent Sir Hugh Allan.

(Duly recd. copy.)

MACMASTER, HALL & GREENSHIELDS,
Attys for Petitioner.

(Endorsed.)

Declaration of Sir Hugh Allan—Filed 8th March, 1879.
(Paraphed) H. H. & G., P.S.C.

No. 35.
Declaration
of Sir Hugh
Allan,
filed 8th
March 1879

RECORD.

*In the
Superior
Court.*

No. 36.
Petitioner's
List of
Exhibits,
filed 21st
March 1879

Canada,
Province of Quebec, }
District of Montreal.

Schedule No. 38.

Superior Court.

The Rev. Robert Dobie, - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

List of Exhibits filed by Petitioner in this case upon the case generally and in 10
support of his answer to the petition to dissolve and suspend the writ of injunc-
tion herein.

EXHIBIT BBB. Three volumes comprising the Minutes from 1831 to 1875 of the
Synod of the Presbyterian Church of Canada in connection with the
Church of Scotland.

EXHIBIT LL. Digest of the Synod Minutes of the Presbyterian Church of Canada.

EXHIBIT MN. Protest served by Petitioner, Joseph Hickson and others, upon the
moderator of the Synod of the Presbyterian Church of Canada in con-
nection with the Church of Scotland against a union resulting in the
formation of the Presbyterian Church in Canada. 20

EXHIBIT CC. Faults and Failures of the late Presbyterian Union in Canada,
by Douglas Brymner.

EXHIBIT EE. Acts and Proceedings of the first General Assembly of the Pres-
byterian Church in Canada.

EXHIBIT KK. Missionary record eighth Church of Scotland containing an-
nouncement of the appointment of Petitioner as a minister.

EXHIBIT FF. Historical and Statistical Report published by order of the said
Synod of the Presbyterian Church of Canada in connection with the
Church of Scotland.

EXHIBIT DD. Cyclopaedia of Religious Denominations, containing authentic ac- 30
counts of the different creeds and systems prevailing throughout the
world, written by members of the respective bodies.

Montreal, March 21st, 1879.

MACMASTER, HALL & GREENSHIELDS,
Attys. for Petitioner.

(Endorsed.)

Petitioner's list of Exhibits—Filed 21st March, 1879.

(Paraphed) G. H. K., Depty. P. S. C.

Schedule No. 41.

RECORD.

In the
Superior
Court.No. 37.
(Petitioner's
Exhibit
M.N.)Protest at
the request
of Joseph
Hickson, et
al., against
The Moder-
ator of the
Pres. Ch. of
Canada in
connection
with Ch. of
Scotland,
dated 15th
June 1875.

On this day, the fifteenth of June, in the year of our Lord one thousand eight hundred and seventy-five, at the request of Joseph Hickson, Esq., George W. Campbell, doctor of medicine, John Cowan, merchant, David Law, merchant, James Stewart Hunter, notary public, and Henry Morgan, merchant, George Graham, merchant, and James Mitchell, merchant, all of the city of Montreal; and Douglas Brymner of the city of Ottawa, Ontario, Esq., Alexander Fleck, of the said city of Ottawa, manufacturer, and Thomas A. McLean of the city of Toronto, barrister-at-law; also at the request of the Rev. Robert Dobie of Milton,

10 Ontario, the Rev. William Simpson of Lachine, Quebec, the Rev. Robert Burnet of Hamilton, Ontario, the Rev. David Watson of Thorold, Ontario, the Rev. G. S. Mullan of Osnabruck, Ontario, the Rev. John Davidson of Williamsburg, Ontario, the Rev. Thomas McPherson of Lancaster, Ontario, the Rev. John McDonald of Beechbridge, Quebec, Elder William McMillan of London, Ontario, Elder Roderick McCrimmon of Lancaster, Ontario, all members and adherents of the Presbyterian Church of Canada in connection with the Church of Scotland.

I, Charles Cushing, the undersigned notary public, duly commissioned and sworn in and for that part of Canada heretofore constituting the Province of Lower Canada, now the Province of Quebec, in the Dominion of Canada, residing
20 in the city of Montreal, in the said Province,

Personally went to St. Paul's Church, in the said city of Montreal, where being and speaking to the very Reverend William Snodgrass, Principal of Queen's College, Kingston, and Moderator for the time being of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, a body politic and corporate, I declared :

THAT WHEREAS a Union is contemplated between the said Presbyterian Church of Canada in connection with the Church of Scotland and certain other churches or denominations, and thereby abrogating certain Acts which are general in their nature and indivisible in their disposition under the pretence of
30 applying their power restricted to local or private matters in the Province to a particular local church or management, and contrary to law, and in violation of the rights and privileges of the parties above-mentioned, and others who may concur against the said contemplated Union.

WHEREFORE I, the said notary, at the request aforesaid, and speaking as aforesaid, do hereby notify and require the very Reverend the Moderator to refrain from signing the said Act of contemplated Union of said Churches, in default whereof they the said *requerants* and others who may concur herein will hold him the said Moderator, in his said capacity, and all other parties to the said contemplated Union, liable and responsible for all consequences inimical to the
40 interests of the said *requerants* as members and adherents of the Presbyterian Church of Canada in connection with the Church of Scotland, and for all damages, injuries and hurts which may have been sustained, or may hereafter be sustained, and to be hereafter recovered by such means as they by their counsel, learned in the law, shall advise.

I, the said notary, at the request aforesaid, and speaking as aforesaid, have protested, and by these presents do most solemnly protest against the said Mode-

RECORD. rator for the time being, ——— and all others whom the same doth, shall, or may in any way concern, for all costs, losses, damages, detriment, injury and hurts already suffered, and which may be hereafter in any way suffered, and for all and whatsoever else may or ought to be protested for or against, for and in consequence of all and every the causes above-mentioned or incidental thereto. And I have served a copy hereof upon the said Moderator for the time being, ——— speaking as aforesaid.

In the
Superior
Court.
No. 37.
(Petitioner's
Exhibit
M.N.)
Protest at
the request
of Joseph
Hickson, *et*
al., against
The Moder-
ator of the
Pres. Ch. of
Canada in
connection
with Ch. of
Scotland,
dated 15th
June 1875.
—continued.

Thus done and protested at the city of Montreal, at the place and on the day, month and year first above written, these presents bearing the number five thousand five hundred and ninety-seven of the original deeds of record in the office of the said notary, being first duly read. And I have signed in testimony of the premises.

(Signed) C. CUSHING, N.P.

A true copy of original hereof remaining of Record in my office.

C. CUSHING, N.P.

(On the back.)

No. 5597, 15th June, 1875.—Protest at the request of Joseph Hickson, *et al.*, against the Moderator of the Presbyterian Church of Canada in connection with the Church of Scotland.

(Endorsed.)

Petitioner's Exhibit M. N.—Filed 21st March, 1879.

(Paraphed) H. H. & G., P. S. C.

No. 38.
Petition for
Deposit and
Notice
thereof,
filed 9th
June 1879

Schedule No. 50.

Canada,
Province of Quebec, }
District of Montreal.

Superior Court.

The Rev. Robert Dobie, - - - - - Petitioner.

vs.

"Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," *et al.*, - - - - - Respondents.

To any one of the Honorable Judges of the Superior Court for Lower Canada, sitting in chambers in and for the district of Montreal,

The Petition of the said Respondents, except the Reverend Gavin Lang and Sir Hugh Allan, Respectfully sheweth:

That the interest of the said Reverend Robert Dobie in the funds in question herein, according to his own shewing and the allegations of his petition, and according to law, consists only in the right to be paid (\$450.00) four hundred and fifty dollars *per annum*, which, capitalized, would not amount to a capital exceeding (\$6,500.00) six thousand five hundred dollars; but the said Respondents are willing, and offer, pending this suit, to deposit in the office of this Court, or as the Court may order, the sum of (\$8,000.00) eight thousand dollars, in such bonds or security as may be ordered to secure the interest and rights of said Reverend Robert Dobie.

Wherefore the said Respondents pray that they may be permitted to deposit in the office of the Prothonotary of this Court, or in such place as ordered by your Honor, the sum of (\$8,000.00) eight thousand dollars, or such other sum as your Honor may fix, to secure the rights of said Dobie pending this suit; and that the injunction granted in this cause may be declared dissolved so soon as said sum in such securities as prescribed by your Honor, be deposited in the office of the said Prothonotary, costs to abide the issue of the suit.

Montreal, 6th June, 1879.

JOHN L. MORRIS,

Attorney for said Respondents,

except the Reverend Gavin Lang and Sir Hugh Allan.

10

To Messrs. MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioner.

Gentlemen, Take notice of the following petition, and that the same will be presented for allowance to one of the Honorable Judges of the Superior Court for Lower Canada, sitting in chambers at the Court House, Montreal, on Monday, the ninth day of June instant, at half past ten of the clock in the forenoon, or so soon thereafter as counsel can be heard.

Montreal, 6th June, 1879.

JOHN L. MORRIS,

Attorney for said Respondents,

except the Reverend Gavin Lang and Sir Hugh Allan.

20

(Endorsed.)

Petition and Notice—Filed 9th June, 1879.

(Paraphed.)

H. H. & G., P.S.C.

Petition rejected, with costs—14th June, 1879.

L. A. J.

Schedule No. 52.

Canada,
Province of Quebec,
District of Montreal.

Superior Court.

30 Reverend Robert Dobie, - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland" *et al.*, - - - - - Respondents.

The Respondents, represented by the undersigned, respectfully except to the judgment this day rendered by the Honorable Mr. Justice Jetté upon their Petition to be allowed to deposit security, &c.

Montreal, 14th June, 1879.

JOHN L. MORRIS,

Attorney for said Respondents.

40

(Endorsed.)

Respondents' exception to judgment rendered this day by the Honorable Mr. Justice Jetté on Petition.—Filed 14th June, 1879.

(Paraphed)

H. H. & G., P.S.C.

RECORD.

In the
Superior
Court.

No. 38.
Petition for
Deposit and
Notice
thereof,
filed 9th
June 1879

—continued.

No. 39.
Respondents
Exception to
Judgment
rendered
this day by
the Honorable
Mr. Justice
Jetté on
Petition,
filed 14th
June 1879.

RECORD.

Schedule No. 53.

In the
Superior
Court.

Canada,
Province of Quebec, }
District of Montreal.

Superior Court.

No. 40.
Answer to
Pleas,
filed 18th
June 1879.

Reverend Robert Dobie, - - - - - Petitioner.

vs.

"Board for the Management of the Temporalities Fund of
the Presbyterian Church of Canada in connection with
the Church of Scotland," *et al.*, - - - Respondents.

The said Petitioner for answer to the plea firstly pleaded by all the Respondents herein, except the Reverend Gavin Lang and Sir Hugh Allan (who, as appears by their declaration herein made, acquiesce in the pretensions of the Petitioner, and abide the order of the Court), says:—

That each, all and every the allegations of the said plea, save and except in so far as they agree with the averments of Petitioner's petition, and of this his answer, are false, untrue and unfounded in fact, and the Petitioner denies each and all of them, and the said Petitioner avers:

That in eighteen hundred and fifty-two he was a member of the Church of Scotland, in Scotland, and then and there was selected and appointed by the Church of Scotland, and by the Reverend John Cook, and the Reverend Alexander Mathieson, both delegates of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, and of the "Clergy Reserves" Commissioners, as a minister and missionary from the Church of Scotland to its connection Church in Canada.

That the Presbyterian Church of Canada in connection with the Church of Scotland, and the ministry thereof, frequently and at divers times from eighteen hundred and thirty-one until eighteen hundred and seventy-five claimed to be, and were, not merely a branch of the Church of Scotland in Canada, but the Church of Scotland in Canada, and as such was aided and supported by the Church of Scotland, in Scotland, by contributions in money, and were during said period recognized at divers times and acknowledged to be the Church of Scotland in Canada by the General Assembly of the Church of Scotland and its Colonial Committee, by the Imperial and Provincial Parliaments (*vide* Imperial Statutes three and four Victoria, chap. seventy-eight), and by the Synod and representatives of the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland.

That it was only by reason of the identity of the said last-mentioned Church with the Church of Scotland, in Scotland, to wit:—one of the Established Churches of the United Kingdom of Great Britain and Ireland, that the said Presbyterian Church of Canada in connection with the Church of Scotland became, and was entitled with the Church of England and its ministers, to share in the proceeds of the "Clergy Reserves" in Canada, to the exclusion of all other Presbyterian bodies laying claim thereto, though professing identity with the said Presbyterian Church of Canada in connection with the Church of Scotland.

That in and previous to the year eighteen hundred and fifty-five the Petitioner was personally entitled to receive his proportionate share in money of the

proceeds of the "Clergy Reserves" in Canada, which said sum at the date of commutation of the claims of ministers upon said "Clergy Reserves" in eighteen hundred and fifty-five, amounted to the capital sum of ten thousand dollars, which at legal interest would yield to the Petitioner an annual allowance of six hundred dollars per annum; that Petitioner, in eighteen hundred and fifty-five, was entitled to draw and receive from the Crown the said capital sum of ten thousand dollars, and to invest, dispose or devise the same as he might think proper, but Petitioner in consideration of the creation of a permanent endowment and trust, which was, in said year eighteen hundred and fifty-five, created and formed by the said Petitioner and the other commuting ministers for the benefit of the said Presbyterian Church of Canada in connection with the Church of Scotland, and of the ministers thereof, upon certain fundamental conditions then and there prescribed and entered into between himself and said other commuting ministers, and amongst others, upon the fundamental principle, which it should not be competent for the Synod of said Church at any time to alter, unless with the consent of the ministers granting such power and authority, that all persons who should have a claim to such trust and the fund thereby created, should be ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and that they should cease to have any claim on or be entitled to any share of the said commutation fund whenever they should cease to be ministers in connection with said Church, did consent and agree to renounce, and did for said considerations renounce, the said capital sum of ten thousand dollars, which he was then entitled to, and consented and agreed to accept for the future a reduced annuity, or annual allowance therefrom during his natural life, to wit, the sum of four hundred and fifty dollars per annum, all which renunciations he would not have agreed and consented to, had it not been expressly provided as a fundamental condition of such renunciations that the money so renounced should, as in fact it was, be constituted into such a permanent endowment for said Church and its ministers, and subject to said further condition that all ministers seceding from or ceasing to be members thereof should forfeit the right to all claim thereto in principal or in interest.

That the said Petitioner as one of the original commutators of the said "Clergy Reserves," was a party to and was instrumental in forming and constituting a trust for the benefit of the said Presbyterian Church of Canada in connection with the Church of Scotland, and of the ministry of said Church, and became, and was and is interested in having, and entitled to have the purposes and objects of the said original trust strictly and faithfully carried out, and would be violating his duty as one of the original commutators, and as a member of the said Church, in suffering or permitting said fund to be deviated from its original purposes.

That no power, or authority either Legislative or otherwise, could legally divert the said trust from its original purposes without the unanimous consent of all those who constituted the same by the abandonment of their personal rights and privileges, which they then had in respect to the same for the purposes aforesaid.

That Petitioner is in good faith in instituting the present action, is not acting from malicious motives, but personally, and as the representative of many others in different parts of Canada, and with the concurrence and by

RECORD.

*In the
Superior
Court.*

No. 40.

Answer to
Pleas,
filed 18th
June 1879.

—continued.

RECORD. the advice of the ministers and members and adherents of the said Presbyterian Church of Canada in connection with the Church of Scotland, and the Synod thereof.

*In the
Superior
Court.*

No. 40.
Answer to
Pleas,
filed 18th
June 1879.
—continued.

That a meeting of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, was duly called, and did meet in Saint Paul's Church in Montreal, on the fourteenth and fifteenth of June, eighteen hundred and seventy-five, at which meeting certain resolutions were carried to give effect to a secession from the said Presbyterian Church of Canada in connection with the Church of Scotland, to certain other religious denominations, to wit, the Canada Presbyterian Church, the Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces.

That at said meeting of Synod the Petitioner protested in the forms prescribed by the Synod of the said Church in such cases, as will appear from the minutes thereof, and did protest notariaily, by the ministration of Charles Cushing, Esquire, notary public, against said secession, and the consummation of a union between the Presbyterian Church of Canada in connection with the Church of Scotland and said other religious bodies, copy of which protest is herein filed; yet notwithstanding the said protest of Petitioner, the personal Respondents and divers others, ministers and elders mentioned in the petition herein, on the 20th fifteenth day of June, departed from Saint Paul's Church and went to another building in the said city of Montreal, to wit, to the Victoria Skating Rink, and there united with the said Canada Presbyterian Church and said other bodies; but Petitioner and divers others, ministers and elders, on said mentioned day, remained in said Saint Paul's Church, and there continued legally and regularly the proceedings of said Synod of said Presbyterian Church of Canada in connection with the Church of Scotland, and duly adjourned, and have since regularly met and carried on the business of the said Synod of the said Church until the present time, and since the said fifteenth of June continuously to the present time, the said Presbyterian Church of Canada in connection with the Church of Scotland, 30 has continued its existence and organization in connection with the Church of Scotland as previously, and is now identical in standard and belief, in church government, and in every other respect with the said Presbyterian Church of Canada in connection with the Church of Scotland, before the fifteenth day of June, eighteen hundred and seventy-five, and is in fact the same Church.

That the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, had no power, and never had power, either by resolution or otherwise, to affect the civil rights of Petitioner, and the said Synod never had any other independence or control other than in matters spiritual and ecclesiastical, as defined in the Declaratory Act of the Synod, in eighteen hundred 40 and forty-four, to wit, matters coming strictly within its own confines, but the Petitioner expressly denies that the said Synod ever had any power by majority to affect his civil rights, or to arrogate to itself rights of control which it did not and could not possess, or to change or vary the terms of a trust regulated by express stipulations made by the persons constituting it.

That the corporation, Respondents, were and are bound to administer the funds under their control, in accordance with the fundamental conditions

prescribed by the Petitioner, and the other constituents of the trust, and in accordance with the provisions of the Act of the Parliament of Canada (twenty-second Vic., chap. sixty-six).

That the said Petitioner, by reason of his maintaining his connection with the said Presbyterian Church of Canada in connection with the Church of Scotland, and by reason of his not being a member of another body, to wit, the Presbyterian Church in Canada, under and by virtue of the unconstitutional legislation obtained by the Respondents, and referred to in their plea, has been deprived of the right to assist in the administration, and to have a voice in the control of the said fund.

That the ministers and members of the said Presbyterian Church of Canada in connection with the Church of Scotland, to wit, the personal Respondents and others mentioned in the Petitioner's petition, who seceded from the said Presbyterian Church of Canada in connection with the Church of Scotland, on the fifteenth day of June, eighteen hundred and seventy-five, and became, with others, absorbed into the Canada Presbyterian Church, are in precisely the same position, as regards the right to participate in the benefits and revenues arising from the said fund, as were the seceders from the said Presbyterian Church of Canada in connection with the Church of Scotland who, in eighteen hundred and forty-three, and eighteen hundred and forty-four, left the said Church and formed themselves into a religious association called the Presbyterian Church of Canada, adhering to the same standards as the Presbyterian Church of Canada in connection with the Church of Scotland, the ministers of which latter body, to wit, the Presbyterian Church of Canada, were declared by the law officers of the Crown to have forfeited their rights, and to be ineligible to participate in the benefits to be derived from the said "Clergy Reserves" and their proceeds.

That the terms of the agreement entered into by the Petitioner and the other commuting ministers, in eighteen hundred and fifty-five, with regard to the constitution of the said permanent endowment fund, were expressly framed to prevent seceding ministers from being eligible, after secession, to participate in the benefits arising from the said fund, and to preserve the said fund solely and only for the benefit of those who maintained their connection with the Presbyterian Church of Canada in connection with the Church of Scotland.

That the right to participate in the "Clergy Reserves" was granted and conceded to the Presbyterian Church of Canada in connection with the Church of Scotland, on the ground that the said church was identical with, and the only representative in Canada of the Church of Scotland as an Established Church of the United Kingdom.

That Petitioner does not base his claim to receive his allowance of four hundred and fifty dollars per annum, upon any pretended concessions made to him in the illegal and unconstitutional Acts of the Local Legislatures of Ontario and Quebec referred to in said plea, irrespective of which Acts he is entitled to his allowance, and he expressly denies that he has ever recognized the authority of the Respondents to hold and administer the said funds under the said Acts.

That the Presbyterian Church in Canada is not the same, or identical with the Presbyterian Church of Canada in connection with the Church of Scotland, but is

RECORD.

*In the
Superior
Court.*

No. 40.

Answer to
Pleas,
filed 18th
June 1879.

—continued.

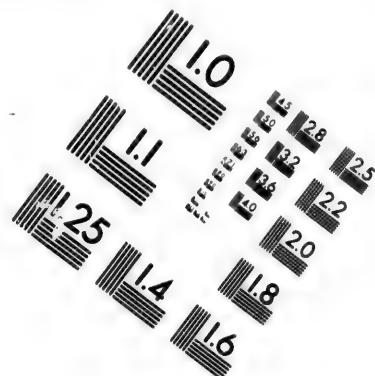
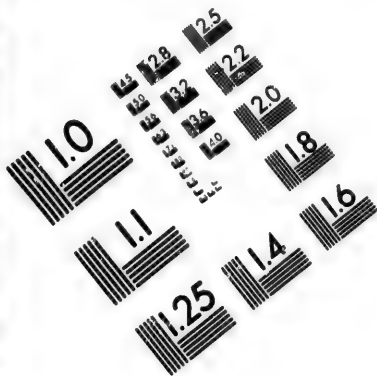
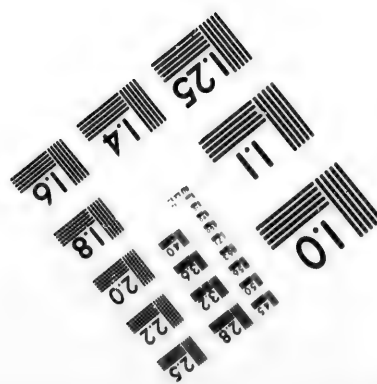
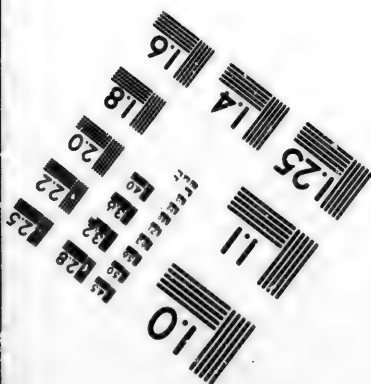
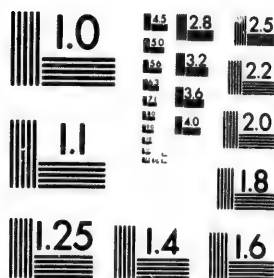


IMAGE EVALUATION TEST TARGET (MT-3)



24 28 25
32 22
20

10

RECORD. a different and distinct body, and is composed of a number of church bodies or associations, which each in turn seceded from either the Church of Scotland, or the Presbyterian Church of Canada in connection with the Church of Scotland.

In the
Superior
Court.

No. 40.
Answer to
Pleas,
filed 18th
June 1879.
—continued.

That the said seceders from the Presbyterian Church of Canada in connection with the Church of Scotland, the Presbyterian Church in Canada, the Presbyterian Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces, did each before the consummation of the union on the fifteenth of June, eighteen hundred and seventy-five, declare that the said united Church, to wit, the Presbyterian Church 10 in Canada should be identical with each of the three uniting bodies and the said Presbyterian Church of Canada in connection with the Church of Scotland, but the said Presbyterian Church of Canada in connection with the Church of Scotland, and the said three uniting bodies, differ with each other in standards and matters of belief, and it was, and is, impossible that the said united church could be identical with all and each of them, and the said Presbyterian Church in Canada is not identical with the said Presbyterian Church of Canada in connection with the Church of Scotland, which latter church has now, and has had since eighteen hundred and thirty-one, a separate and distinct ecclesiastical and civil existence, and Petitioner expressly denies that the Presbyterian Church 20 of Canada in connection with the Church of Scotland, now exists under the name of the Presbyterian Church in Canada, as falsely alleged in Respondents' plea.

Wherefore the said Petitioner persists in the allegations and conclusions of his petition filed in this matter, and prays that the said plea be hence dismissed with costs *distrains* to the undersigned Attorneys.

Montreal, April 12th, 1879.

MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioner.

30

And the said Petitioner for general answer to the plea firstly pleaded y the said Respondents (herein pleading) says :

That each, all and every the allegations of said plea are false, untrue, and unfounded in fact, and insufficient in law to maintain the conclusions thereof.

Wherefore said Petitioner prays the dismissal of said plea, and further prays, as in and by his petition he hath already prayed ; the whole with costs *distrains* in favor of the undersigned Attorneys.

Montreal, April 12th, 1879.

MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioner. 40

And the said Petitioner for replication to the *défense au fonds en fait* of said Respondents herein pleading, says :

That each, and all and every the allegations of his petition herein are true and well founded in fact.

40

Wherefore the Petitioner prays, as in and by his said petition he hath already prayed. RECORD.

Montreal, April 12th, 1879.

MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioner.

In the
Superior
Court.

(Duly received copies.)

JOHN L. MORRIS,

Attorney for Respondents,

except Reverend G. Lang and Sir Hugh Allan.

No. 40.
Answer to
Pleas,
filed 18th
June 1879.
—continued.

(Endorsed.)

10 Answers to Pleas—Filed 18th June, 1879.

(Paraphed) H. H. & G., P.S.C.

Schedule No. 54.

Canada,
Province of Quebec, }
District of Montreal.

Superior Court.

No. 41.
Respondents
Answer to
Petitioner's
Answer to
Respondents
Plea,
filed 12th
April 1879.

The Reverend Robert Dobie, - - - - - Petitioner.
vs.

20 "Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

And the Respondents, excepting the Reverend Gavin Lang and Sir Hugh Allan, without admitting, but on the contrary denying, all and every the allegations of the answer to the said Respondent's plea, filed by the Petitioner for special answer to said answer, say :

That since the union mentioned in said Respondent's plea, and in the Petitioner's answer to said plea, the said Church of Scotland has aided said united church, to wit, the Presbyterian Church in Canada, and has sent to it large contributions in money, and has in many other ways expressed sympathy with and recognized the existence of said united church, and approved of said union.

30 That it is untrue, as falsely alleged by Petitioner in said answer, that it was only because of the identity of the Presbyterian Church of Canada in connection with the Church of Scotland, and the Church of Scotland, in Scotland, that the said first-mentioned Church was entitled, with the Church of England and its ministers, to share in the proceeds of the "Clergy Reserves in Canada" to the exclusion of all other Presbyterian bodies laying claim thereto, but, on the contrary, as appears by all of the said Imperial and other Acts relating to said Clergy Reserves, it was only because the said Presbyterian Church of Canada in connection with the Church of Scotland, was a Protestant church, and her ministers were a portion of a Protestant clergy, that they obtained a share of said Clergy
40 Reserves.

That this also appears from the opinion of the law officers of the Crown upon the question, given in or about the year (1821) eighteen hundred and twenty-

RECORD. one, as follows: "When your Lordships desire the Judges to state if any other clergy (than the Church of England) are included, and what other? we answer, it appears to us that the clergy of the Established Church of Scotland do constitute one instance of such other Protestant clergy, and although in answering your Lordships' question, we specify no other Church than the Protestant Church of Scotland, we do not thereby intend that besides that Church the ministers of other churches may not be included under the term Protestant clergy."

*In the
Superior
Court.*

No. 41.
Respondents
Answer to
Petitioner's
Answer to
Respondents
Plea,
filed 12th
April 1879.
—continued.

That, in fact, other Presbyterian ministers and ministers of other denominations than the Church of England and said Presbyterian Church of Canada in connection with the Church of Scotland, obtained and were offered a share of 10 said Clergy Reserves fund, which was, in fact, distributed as follows:—

Aggregate to Church of England,	-	-	-	-	£275,851	5	2	stg.
"	Presbyterian Church of Canada in connection with the Church of Scotland,	127,448	5	0	"			
"	Reverend Messrs. Boyd and Rogers and Smart, of the United Synod of the Presbyterian Church of Upper Canada,	2,240	11	0				
"	Wesleyan Methodist Minister,	9,768	11	0				
"	Roman Catholic Clergy of Upper Canada,	20,932	15	0				

£436,241 7 2 stg.

20

That, further, the Presbyterian Church formerly called the Presbyterian Church of Canada was offered, and refused, a share of said Clergy Reserves money.

That it is not true, as alleged by Petitioner in his said answer, that only the personal Respondents and divers others ministers and elders mentioned in said petition on the fifteenth of June, eighteen hundred and seventy-five, departed from St. Paul's Church to the Victoria Skating Rink; but the legal Synod of said Presbyterian Church of Canada in connection with the Church of Scotland did then legally adjourn its meeting and session to said Victoria Skating Rink, 30 for the sake of convenience and because of the larger accommodation and space afforded by said Victoria Skating Rink, and did there continue its session for an hour and more before said union was consummated.

That it is untrue, as alleged in said answer, that said Dobie and divers others then remaining behind in St. Paul's Church legally and regularly continued the proceedings of said Synod of said Presbyterian Church of Canada in connection with the Church of Scotland and duly adjourned, and have since regularly met and carried on the business of said Synod until the present time.

That it is not true, as alleged in said answer, that since the said fifteenth of June continuously up to the present time the said Presbyterian Church of Canada 40 in connection with the Church of Scotland has continued its existence and organization in connection with the Church of Scotland, as previously, and is now identical with the said Church before the said fifteenth of June, and is the same Church.

But, on the contrary, the said Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland and the said last mentioned Church, on said fifteenth of June, changed its name into the Presbyterian Church

20

30

40

50

60

ye

in Canada, and ever since then, and now, has its legal existence and identity under that name. RECORD.

Wherefore the said Respondents pray that Petitioner's said answer and petition may be hence dismissed, with costs *distracts* to the undersigned.

Montreal, 12th April, 1879.

JOHN L. MORRIS,

Attorney for Respondents,
except Reverend Gavin Lang and Sir Hugh Allan.

(Duly recd. copy,)

MACMASTER, HALL & GREENSHIELDS,
Attys for Petitioner.

(Endorsed.)

Respondents' answer to Petitioner's answer to Respondents' Plea—Filed
12th April, 1879.

(Paraphed) H. H. & G., P. S. C.

In the
Superior
Court.

No. 41.
Respondents
Answer to
Petitioner's
Answer to
Respondents
Plea,
filed 12th
April 1879.
—continued.

Schedule No. 55.

Rev. Gavin Lang, of the city and district of Montreal, Minister, aged forty-three years, a witness produced on the part of the Petitioner, this twenty-fifth day of June, eighteen hundred and seventy-nine, who being duly sworn, deposeth and saith:—

Q. You are one of the Respondents in this cause?

A. Yes.

Q. I believe you have filed a declaration accepting the judgment of the Court, whatever it may be?

A. Yes.

Q. You have not contested the petition?

A. No.

Q. You are the minister of St. Andrew's Church, Montreal?

A. I am.

Q. How long have you been a minister of religion?

A. About fifteen years.

Q. In connection with what Church did you become a minister?

A. With the Church of Scotland, in Scotland.

Q. Were you ever ordained a minister of the Church of Scotland in Scotland?

A. I was.

Q. How long did you act as a minister of the Church of Scotland in Scotland?

A. About six years.

Q. What was the occasion or cause of your ceasing to act as a minister of the Church of Scotland in Scotland?

A. On receiving a presentation to St. Andrew's Church, Montreal, in the year 1870.

No. 42.
Deposition
of the Rev.
Gavin Lang,
produced by
Petitioner
25th June
1879.

RECORD.

*In the
Superior
Court.*

No. 42.
Deposition
of the Rev.
Gavin Lang,
produced by
Petitioner
25th June
1879.
—continued.

Q. Have you been since continuously a minister of the Church of Scotland ?

A. I have.

Q. When you were presented to St. Andrew's Church, Montreal, what ecclesiastical organization was it connected with ?

A. The Presbyterian Church of Canada in connection with the Church of Scotland.

Q. And has St. Andrew's Church remained in connection with the same ecclesiastical organization continuously since ?

A. I believe so.

Q. Have you remained a minister of the Presbyterian Church of Canada in connection with the Church of Scotland continuously since your presentation to St. Andrew's Church in 1870 ?

A. I have.

Q. You are still a minister of the Presbyterian Church of Canada in connection with the Church of Scotland ?

A. Yes.

Q. You are aware that in June, 1875, a union was effected between certain of the members of the Presbyterian Church of Canada in connection with the Church of Scotland, and three ecclesiastical bodies, namely, the Canada Presbyterian Church, the Church of the Maritime Provinces in connection with the Church of Scotland and the Presbyterian Church of the Lower Provinces ?

A. So I was informed.

Q. What was the name that this amalgamated body took ?

A. I believe it was called the Presbyterian Church in Canada.

Q. At the time this union was actually brought about, you were absent from the country I believe ?

A. Yes ; I was in Scotland.

Q. How long was it after June, 1875, before you returned to Canada ?

A. About three or four months afterwards.

Q. Notwithstanding this union, when you returned to Canada, did you find that the Presbyterian Church of Canada in connection with the Church of Scotland, had any existence in this country ?

A. It had.

Q. Did many of the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, unite with the new body, the Presbyterian Church in Canada ?

A. Yes ; I believe so. I have been told so.

Q. You are not, of course, a member of the Presbyterian Church in Canada yourself ?

A. No.

Q. But you have no doubt that quite a considerable number of the old ministers actually associated themselves with the new body ?

A. Yes ; I believe so.

Q. Since the 15th of June, 1875, has the Presbyterian Church of Canada in connection with the Church of Scotland continued its existence in this country ?

A. Yes.

Q. Under what name ?

A. Under the old name.

Q. Has it kept up its Presbyteries, Synods, and general Church organization as previously ?

A. It has.

Q. Have you any doubt now about its having, and having had since the 15th of June, 1875, a distinct organization ?

A. I have no doubt.

Q. Has it clergymen ministering within its domain ?

A. It has.

Q. Do you know the Petitioner, the Rev. Mr. Dobie ?

10 A. Yes ; I have known him since 1871.

Q. When you came here, of what church organization was he a member and a minister ?

A. Of the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. Has he continued to be such up to the present time ?

A. Yes.

Q. He is another of those ministers who did not join the Presbyterian Church in Canada ?

A. Yes.

20 Q. Is he now, and has he been since you came to this country, a minister of the Presbyterian Church of Canada in connection with the Church of Scotland, in good standing ?

A. Yes.

Q. What is the name of his particular Church or congregation ?

A. St. Andrew's Church, of Milton, in the Province of Ontario.

Q. Are you at present acting in any official capacity in connection with the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland ?

A. I am Synod clerk, *pro tempore*. I have in my possession, as such Synod clerk *pro tempore*, the acts and proceedings of the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, on and since the 15th day of June, 1875, ending with the Acts and Proceedings of the latest meeting of the Synod of the said Church, held at Toronto, in the Province of Ontario on the 12th day of June instant, which latter minutes are signed by myself as clerk *pro tempore*, and also by John Macdonald, as moderator of the said Synod. Upon and since the 15th day of June, 1875, the Rev. Robert Burnet has been acting as clerk of the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland, and the signature "Robert Burnet" to all the minutes of the said meetings of Synod, prior to the last meeting, is the signature of the said Robert Burnet. The minutes of the meeting of the 15th June, 1875, are also signed by Robert Dobie, as moderator ; also the minutes of the meeting of the 30th of November, 1875, are signed by the said Robert Dobie. The minutes of the meeting held on the 13th day of June, 1876, are signed by David Watson, as moderator, in addition to the said Burnet ; and also the minutes of the meeting held on the 14th day of June, 1876, are signed by the said David Watson as moderator. The minutes of the meeting held on the 5th day of June 1877, are signed by myself, as moderator ; also the minutes of the meeting held on

In the
Superior
Court.

No. 42.
Deposition
of the Rev.
Gavin Lang,
produced by
Petitioner
25th June
1879—
continued.

RECORD. the 6th day of the said month of June are signed by myself, as moderator ; also the minutes of the meeting held on the 7th day of said month of June of the same year. The minutes of the meeting held on the 11th day of June, 1878, are signed by John Davidson, moderator ; and also the minutes of the meeting held on the 12th day of June of the same year ; and also the minutes of the meeting held on the 13th day of June of the same year are signed by the said John Davidson, as moderator. The minutes of the meeting held at Toronto on the 10th day of June instant are signed by John Macdonald, as moderator ; and also those on the 11th day of said June, and also those on the 12th day of said June. I produce all the said original minutes between the dates mentioned, and file a copy thereof, certified by me, which I mark "Petitioner's Exhibit at Enquete Z1." The said copy so filed by me is a true copy of said original minutes.

In the
Superior
Court.

No. 42.
Deposition
of the Rev.
Gavin Lang,
produced by
Petitioner
25th June
1879.

—continued.

Q. Are you aware that since the 5th of June, 1875, the Board, Respondents, have been acting under and in virtue of certain legislation obtained from the Legislature of the Province of Quebec ?

A. I believe so.

Q. On about the 15th June, you were a member of this Board, Respondents, in virtue of the legislation obtained from the old Province of Canada ?

A. Yes.

Q. Under that legislation obtained from the old Province of Canada you would have had, in the ordinary course of things, to retire from the Board after a certain term of years ?

A. Yes.

Q. And all other members also in a certain rotation ?

A. Yes.

Q. Under the new legislation of the Province of Quebec, your name has been continued on the list as a member of the Board still ?

A. I believe so.

Q. Have you been summoned to attend any meetings of this Board lately ?

A. Not lately ; not since May, 1878.

Q. Do you know if they have held any meetings lately ?

A. I do not ; I have not been summoned to any.

Cross-Examined.

Q. You stated that you received a presentation in 1870, to St. Andrew's Church, Montreal ? What do you mean when you state that you received a presentation ?

A. I received a presentation—a document inviting me to assume the pastorate of that Church.

Q. You mean simply that you were invited to come to Montreal and assume the pastorate of that Church ?

A. I took it in the form of a presentation

Q. What do you understand by the term presentation ?

A. It was laid as such before my Presbytery in Scotland.

Q. This presentation as you call it, was it not simply in the form of a letter or invitation from the St. Andrew's Church in Montreal, to come here and become the pastor of the said Church ?

A. It was a document signed by three gentlemen in Scotland, acting for the congregation of St. Andrew's Church, Montreal. They were Dr. Norman Macleod, Dr. Macduff and Mr. James A. Campbell.

Q. Do you know the circumstances under which those gentlemen undertook that duty?

A. They said they were authorized by the congregation in Montreal to make this presentation.

Q. After receiving that document, what was the next step?

A. The document was laid before the Presbytery of Hamilton, in Scotland, and the process of translation begun.

Q. What was the process of translation?

A. The same as from one parish to another in Scotland.

Q. In what way?

A. The documents of translation were sent out to the Presbytery of Montreal, in connection with the Presbyterian Church of Canada in connection with the Church of Scotland, and received by them.

Q. And you came to Montreal and were inducted here?

A. I was inducted on the 28th November, 1870, by the Presbytery of Montreal of the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. You were inducted by the Presbytery in the usual way to the pastoral charge of St. Andrew's Church of Montreal?

A. Yes, as I understand the usual way.

Q. What document was laid before the Presbytery of Hamilton, in Scotland, at the time you say you were translated? Was there a call from St. Andrew's Church, Montreal, to you, calling you to be their minister?

A. Not before the Presbytery, as far as I know.

Q. Did you receive such a call before you came?

A. No.

Q. Was no such call sent?

A. There was a letter from yourself (Mr. Morris, counsel for Respondent) forwarded to me.

Q. When you were translated, in Scotland, from one congregation to another, as I believe you were, was there not always a call before the Presbytery?

A. Not before the Presbytery; I was not translated from a congregation; I was translated from one parish to another parish.

Q. In such cases did you not always receive a call before translation?

A. The call was always presented after the presentation was sustained.

Q. But I ask you if you received a call before translation?

A. Of course, yes, after presentation.

Q. Is it not always the case in Scotland that the call is received and laid before the Presbytery before the translation takes place?

A. Yes.

Q. Have you any doubt that in this case before you were translated to Montreal a call from St. Andrew's Church, Montreal, was sent to Scotland and laid before the Presbytery?

A. I do not know.

RECORD.

In the
Superior
Court.

No. 42.
Deposition
of the Rev.
Gavin Lang,
produced by
Petitioner
25th June
1879.—
continued.

RECORD.

*In the
Superior
Court.*

No. 42.
Deposition
of the Rev.
Gavin Lang,
produced by
Petitioner
25th June
1879.

—continued.

Q. You never saw such a call or heard of it?

A. Not in Scotland.

Q. When did you first see it or hear of it?

A. I think the call was moderated after I came here, if I remember right; but we attach very little importance to calls in Scotland?

Q. Then, as a matter of fact, the translation you have spoken of from Scotland to Montreal could not have been a translation in the same sense as a translation is in Scotland, seeing that no call was laid before the Presbytery in Scotland, previous to your translation?

A. My parish was not declared vacant in Scotland till I was inducted here, 10 and notification of the induction was sent from here. I said I did not know whether a call had been laid before the Presbytery in Scotland.

Q. Could a translation take place in Scotland without a call?

A. I do not know.

Q. You stated that on the 15th of June and during the whole of that month you were absent from this country in Scotland?

A. Yes, in Scotland or England.

Q. Then personally, you know nothing about the proceedings which took place in the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, at its meeting held in Montreal in June, 1875?

A. I do not know the force of the word "personally." What I had was from newspaper reports or correspondence.

Q. And that, then, is all you know on the subject?

A. Except from the subsequent proceedings.

Q. How many of the ministers, who were ministers of the Presbyterian Church of Canada in connection with the Church of Scotland in June, 1875, entered into the union of Churches of which you have spoken in your examination in chief?

A. I do not know the exact number.

Q. How many of the said ministers did not enter into the said union?

A. I do not remember.

Q. Can you tell by referring to the minute book you produced to-day?

A. I do not think I could.

Q. Are you positive that you cannot?

A. I refer to my former answer.

Q. Will you look at the minute book and see if it does not show how many ministers did not go into the union?

A. I am not sufficiently acquainted with the minute book. The only minutes which I kept were those of the last session.

Q. You say in your examination in chief, "since June, 1875, the Presbyterian Church of Canada in connection with the Church of Scotland continued under its old name;" then can you not tell me how many ministers continued under such name and how many congregations and how many presbyteries?

A. I cannot tell off hand.

Q. Can you tell me by referring to your minute book?

A. I am not sufficiently acquainted with the minutes.

Q. Does this book, which is produced marked "Z," contain the original RECORD minutes you have referred to when you produced this book?

A. I believe so.

Q. Do you know when this book was written up and where?

A. I do not know; I got the book from the clerk of the Synod.

Q. Do you know who keeps the minutes of the Commission of the Synod which is mentioned in this book?

A. I fancy it is the Reverend Robert Burnet.

Q. Is he the clerk?

10 A. I believe so.

Re-Examination.

Q. How does it happen that you have been for some time acting as clerk *pro tempore*?

A. In consequence of the illness of the clerk, the Reverend Robert Burnet.

Q. Do you know in what condition of health he is at the present time?

A. I only know he has been very ill, and he is very ill still with typhoid fever.

20 Q. It was on account of his illness you were called upon to keep the minutes?

A. Yes.

Q. Mr. Morris requested you to take the minute book produced and mention the names of the clergymen and presbyteries acting in connection with the Presbyterian Church of Canada in connection with the Church of Scotland, to which you answer that you were not sufficiently acquainted with the minute book. Will you explain if the contents of the minute book itself would supply the information asked for as to those ministers maintaining their connection with the Presbyterian Church of Canada in connection with the Church of Scotland?

30 A. It must contain the names of a large number of them.

Q. It would at all events contain the names of those who attend the respective meetings of Synod?

A. Yes.

Q. It would not show those outside who did not attend?

A. No.

Q. Have you any ministers or missionaries acting in connection with the Church at the present time, and for some time past, who are not members of the Synod?

40 A. Yes.

Q. You have been asked to mention the names of ministers maintaining their connection with the said Church; can you mention about what number of congregations are at present maintaining connection with the Presbyterian Church of Scotland, to whom the ministrations of religion are given?

A. I believe there are upwards of thirty; but I do not know the exact number.

*In the
Superior
Court.*

No. 42.
Deposition
of the Rev.
Gavin Lang,
produced by
Petitioner
25th June
1879—,
continued.

RECORD.

Re-Cross-Examined.

*In the
Superior
Court.*

No. 42.
Deposition
of the Rev.
Gavin Lang,
produced by
Petitioner
25th June
1879.—
continued.

Q. Will you be kind enough to give the details as to the congregations you have referred to in your last preceding answer ?

A. I have already stated that I do not know the exact number.

Q. How is it that you could recollect there are about thirty ?

A. Simply from a statement which I saw at the Synod, which stated the fact in the aggregate.

Q. Then you have no personal knowledge as to the fact that there are about thirty.

A. I believe it.

Q. Do you personally know it except from the statement you say you have seen ?

A. I do not doubt it.

Q. I want to know whether you know it of your own knowledge, except from that statement ?

A. I know it generally sufficiently not to doubt it.

Q. From what is that knowledge derived ?

A. I stated, in my former answer, from the document before the Synod.

Q. Does the roll of the said minute book, at the commencement of each session, show the number of congregations that you have referred to ?

A. I am not the clerk of Synod ; I am not sufficiently acquainted with the procedure.

Q. Is it not a fact that the roll should show it, according to usage ?

A. I am not sufficiently acquainted with the clerk's duties.

And further deponent saith not, and this deposition having been read to him, he declares it to contain the truth.

(Signed) S. A. ABBOTT, *Stenographer.*

No. 43.
Admission
of Parties,
filed 27th
June 1879.

Canada,
Province of Quebec, }
District of Montreal.

Schedule No. 53.

In the Superior Court.

The Reverend Robert Dobie, - - - - - Petitioner.

vs.

" Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

ADMISSIONS OF THE PARTIES.

To save costs the Petitioner and Respondents pleading hereby admit : —

1. That the printed official minutes of the Acts and Proceedings of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, 40 from the year 1831 to the year 1875, both inclusive are to be found in the three volumes of books filed by the Petitioner in this cause on the twenty-first day of

March last, each of said books being marked "BBB." The said Respondents pleading contending that said Acts and Proceedings end at page marked "A" in the volume endorsed from 1870 to 1875, whereas the Petitioner contends that said Acts and Proceedings in so far as contained in said book "BBB," from 1870 to 1875, end at page 125 of the Acts and Proceedings of Synod for June, 1875, and the said parties consent that the said printed Acts and Proceedings do avail as legal proof in this cause, in the same manner and to the same extent as if the said Acts and Proceedings of said Synod had been regularly proved by the production and proof therein of the original minutes, the whole in so far as the said minutes are relevant to the issues in this cause.

2. That Petitioner's Exhibit "EE," filed on the said 21st day of March, 1879, is an official printed copy of the Acts and Proceedings of the first General Assembly of the Presbyterian Church in Canada, and the said parties consent that the said printed Acts and Proceedings do avail as legal proof in this cause in the same manner and to the same extent as if the said Acts and Proceedings of said Assembly had been regularly proved by the production and proof of the original minutes, the whole in so far as said Acts and Proceedings are relevant to the issues in this cause.

3. That the book filed in this cause as Petitioner's Exhibit "KK" on the said 21st day of March, 1879, commencing on page 147 with the words "Colonial Churches," and ending with the words "for the use of immigrants," on page 149 of said book is the Report to the General Assembly of the Church of Scotland, in Scotland, by its Colonial Committee in Scotland, presented in May, 1853, and that the Reverend Robert Dobie referred to in the said Report is the Petitioner in this cause, and the said parties consent that the said printed Report have the same effect, and avail to the same extent for the purposes of this suit as the original would do if produced and duly proved herein, and that the said Petitioner came to Canada in the year 1852, after being selected as above mentioned in said report, and that after acting as a missionary and preacher for some time in the city of Montreal, of the Presbyterian Church of Canada in connection with the Church of Scotland, he was subsequently, to wit, on the 7th day of October, 1853, ordained and inducted as a minister into the charge of the church at Osnabrock, in the Presbytery of Glengarry, in the Province of Ontario, under the ecclesiastical jurisdiction of the Presbyterian Church of Canada in connection with the Church of Scotland, and that the Respondent's Exhibit No. 3¹ is a correct extract from the records of the Presbytery of Glengarry, referring to the said ordination and induction.

4. That the book filed as Petitioner's Exhibit "LL" on the said 21st day of March, 1879, is the official printed digest of the minutes of the Synod of the Presbyterian Church of Canada, from the first meeting held at Kingston in July, 1844, down to the year 1861, both inclusive; and said parties consent that the said printed digest have the same effect, and avail to the same extent for the purpose of this suit as the original of the minutes contained in said book would do if produced and duly proved in this cause, the Respondents waiving their right to object to the relevancy of the said book "L.L." to the issues herein.

5. That the copy of the Statutes of the Legislature of the Province of Ontario printed on pages 104, 105, 106 and 107 of the Acts and Proceedings of said Synod,

RECORD.

In the
Superior
Court.No. 43.
Admission
of Parties,
filed 27th
June 1879.

—continued.

RECORD. of the Presbyterian Church of Canada in connection with the Church of Scotland for 1875, contained in said Petitioner's Exhibit "BBB." is a true copy of the statute of which it purports to be a copy, passed by the Legislature of the Province of Ontario.

*In the
Superior
Court.*
No. 43.
Admission
of Parties,
filed 27th
June 1879.
—continued.

6. That the said Petitioner was one of the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, who commuted his claim to an annual allowance (that he had a right to claim by virtue of the secularization of the Clergy Reserves, and under the authority of the Act: 18 Vic., cap. 2, and the other Acts relating thereto), said commutation being upon the terms of the resolutions passed by the Synod of said Church, on the 11th day of 10 January, 1855, hereinafter set out in the next following admission.

7. That the allegations contained in the following portions of the Petitioner's petition are true, to wit;—

(a) From line 43 on page 2 down to and inclusive of line 8 on page 9 of said petition, being as follows:

"That by Acts of the Imperial Parliament of Great Britain, and of the
"Imperial Parliament of the United Kingdom of Great Britain and Ireland, the
"Sovereigns of Great Britain and of the United Kingdom of Great Britain and
"Ireland, were empowered to authorize the Governor, or Lieutenant-Governor,
"of each of the then Provinces of Upper and Lower Canada, respectively to make 20
"from out of the lands of the Crown within the said Provinces respectively such
"allotment and appropriation of lands, as therein mentioned, for the support and
"maintenance of the Protestant clergy within the said Provinces, and to apply
"the rents, profits and emoluments which might at any time arise from such
"lands, so allotted and appropriated, solely for the maintenance and support of
"a Protestant clergy within the Province in which the same might be situated,
"and to no other purpose whatever.

"That subsequently thereto, in pursuance of the said Acts, certain lands of
"the Crown were from time to time reserved for the purposes mentioned therein,
"which said lands were known, and were and are commonly designated by the 30
"name of the 'Clergy Reserves.'

"That the Governor, Lieutenant-Governor and Administrator of the here-
"tofore Provinces of Upper and Lower Canada, respectively, were empowered
"with the consent of the Executive Council of such Provinces, respectively, and
"in pursuance of His Majesty's instructions, to sell and convey a part of the said
"Clergy Reserves' in each of said Provinces, and to invest the proceeds of such
"sales in the Public Funds of the said United Kingdom, and to appropriate the divi-
"dends and interests of the moneys so invested for the support and maintenance
"of a Protestant clergy within the said Provinces, solely and to no other pur-
"pose whatever. 40

"That by another Imperial Act the sale of the entire Clergy Reserves in
"the Province of Canada, and the investment of the proceeds of such sale
"and the distribution of the interests and dividends of such investment,
"subject to certain conditions, were authorized for the purposes hereinbefore
"mentioned.

"That by another Imperial Act the Legislature of the heretofore Province
"of Canada was authorized to dispose of the said Clergy Reserves and to make

“such investment of the proceeds thereof as to the said Legislature might seem
 “meet, subject to the proviso, that it should not be lawful for the said Legisla-
 “ture of the Province of Canada, by any Act or Acts thereof as aforesaid, to an-
 “nul, suspend, or reduce any of the annual stipends which had, previously thereto,
 “been already assigned and given to the clergy of the Churches of England and
 “Scotland, or to any other religious bodies or denominations of Christians in
 “Canada (to which the faith of the Crown was pledged) during the lives and
 “incumbencies of the parties then receiving the same, or to appropriate or apply
 “to any other purpose any part of the said proceeds, investments, interest, divi-
 10 “dends, rents and profits that might be required for the payment of the stipends
 “and allowances due or accruing to the clergy of the said Churches of England
 “and Scotland during their lives or incumbencies.

“That the Imperial Acts, to wit, the Acts of the Parliament of Great
 “Britain and the United Kingdom of Great Britain and Ireland hereinbefore
 “referred to, the whole of which are herein invoked, are specifically referred to in
 “the Act passed by the heretofore Province of Canada, in the eighteenth year
 “of the reign of Her Majesty Queen Victoria, entitled 18 Victoria, chapter 2.

“That, under and by virtue of the said last mentioned Act, it was enacted
 “and declared that the moneys arising from the sale and disposal of the said
 20 “Clergy Reserves, in the said Province of Upper Canada, should continue to
 “form a separate fund, which should be called the ‘Upper Canada Municipalities
 “Fund,’ and that the moneys arising from the sale and disposal of the Clergy
 “Reserves in the said Province of Lower Canada should continue to form a
 “separate fund, which should be called the ‘Lower Canada Municipalities Fund,’
 “and that after deducting the necessary expenses attending the sales of the said
 “Clergy Reserves, and managing the same and the said Funds, the money
 “forming the said Funds, or that had previously arisen therefrom, should be
 “paid into the hands of the Receiver General of the heretofore Province of
 “Canada, to be by him applied according to the purposes of the said last men-
 30 “tioned Act.

“That, by virtue of the said last mentioned Act, the annual stipend and
 “allowance which had been, before the passing of the Act of Parliament of
 “the United Kingdom, in the sixteenth year of Her Majesty’s reign, assigned
 “or given to the clergy of the Churches of England and of Scotland, or to any
 “other religious bodies or denominations in either section of the Province, and
 “chargeable, under the said Act of Parliament, on the Clergy Reserves, in such
 “section (and to which the faith of the Crown was pledged) should, during the
 “natural lives or incumbencies of the parties (to wit, the ministers and mission-
 “aries of the said Churches and religious denominations receiving the same at
 40 “the time of the passing of the said Act, to wit, the Imperial Act 16 Victoria)
 “be a first charge on the Municipalities’ Fund for that section of the Province,
 “and should be paid out of the same in preference to all other charges or expenses
 “whatever.

“That, by the Act of the late Province of Canada (18 Vic., cap. 2) it was
 “enacted that the Governor of the said Province of Canada might, whenever he
 “might deem it expedient, with the consent of the parties and bodies severally
 “interested, commute with the said parties such annual stipends or allowances

RECORD.

*In the
 Superior
 Court.*

No. 43.
 Admission
 of Parties,
 filed 27th
 June 1879.
 —continued.

RECORD. "for the value thereof, to be calculated at the rate of six per cent. per annum
 "upon the probable life of each individual, and that such commutation amount
 "should be paid accordingly out of that Municipalities' Fund, upon which such
 "stipend or allowance was made chargeable by the said last mentioned Act.

—
*In the
 Superior
 Court.*

No. 43.
 Admission
 of Parties,
 filed 27th
 June 1879.
continued.

"That under and by virtue of the said last-mentioned Act, each of the
 "ministers and missionaries of the Presbyterian Church of Canada in connection
 "with the Church of Scotland, then receiving benefits within the said Province
 "of Canada from the said Clergy Reserves, or under the Act of Secularization
 "thereof, or from the proceeds thereof, or from the Municipalities' Funds within
 "the respective sections of the said Province of Canada, was entitled to receive 10
 "a sum of money as commutation for the value of the annual stipend or allow-
 "ance payable to him therefrom, and for the interest which he had individually,
 "and as a member of the Presbyterian Church of Canada in connection with the
 "Church of Scotland, in the said Clergy Reserves and in the said Municipalities'
 "Fund, arising therefrom (the whole as more particularly set forth in said Acts
 "to which reference is made).

"That the Synod of the Presbyterian Church of Canada in connection with
 "the Church of Scotland, was duly summoned for the purpose of taking such
 "steps as might be necessary to enable the said Synod and the members thereof
 "to take advantage of the commutation clauses in the said Act of the Legislature 20
 "of Canada, 18 Victoria, cap. 2, and the said Synod duly met and determined
 "and decreed as set out in the minutes hereinafter cited, in the city of Mont-
 "real, on the tenth and eleventh days of January, eighteen hundred and
 "fifty-five.

"The following is a copy of the Proceedings of said Synod, extracted from
 "its official records at pages three to eight of the Proceedings of Synod for eigh-
 "teen hundred and fifty-five.

ACTS AND PROCEEDINGS OF THE

"Synod of the Presbyterian Church of Canada in connection with the Church of 30
 "Scotland, begun at Montreal the 10th day of January, and concluded
 "the 11th day of January, eighteen hundred and fifty-five years.

SESSION XXVI.

Diet I.

"At Montreal, and within St. Andrew's Church there;
 "Wednesday, the tenth day of January, one thou-
 "sand eight hundred and fifty-five years.

"The which day after sermon by the Rev. Dr. Mathieson, from Psalm
 "xlviii., 12, 13, 'Walk about Zion and go round about her, tell the towers
 "thereof; mark ye well her bulwarks, consider her palaces that ye may tell it 40
 "to the generation following;' the Synod of the Presbyterian Church of Canada
 "in connection with the Church of Scotland met *pro re nata*, and was constituted
 "with prayer by the moderator, the Reverend James Williamson, A.M.; sede-
 "runt; Mr. James Williamson, moderator; Mr. John McMurchy, Mr. John
 "Barelay, Dr. Alexander Mathieson, Mr. James Anderson, Mr. James C. Muir,
 "Dr. John Cook, Mr. William Simpson, Mr. Alexander Wallace, Dr. Robert

" McGill, Mr. James T. Paul, Mr. Thomas Haig, Mr. Archibald H. Milligan, Mr. John McDonald, Mr. John McKenzie, Mr. Hugh Urquhart, Mr. John McLaurin, Mr. Thomas McPherson, Mr. Eneas McLean, Mr. Donald Munro, Mr. Thomas Scott, Mr. Andrew Bell, Mr. Robert Dobie, and Mr. John White, ministers; together with Mr. Alexander Morris, Mr. John Thompson, Mr. Thomas A. Gibson, and the Hon. Thomas McKay, elders.

" The moderator laid before the Synod a requisition which had been addressed to him, calling on him to summon a meeting of the Synod; also a copy of his circular calling the present meeting. The same were read as follows:—

RECORD.

*In the
Superior
Court.*

No. 43.

Admission
of Parties,
filed 27th
June 1879.
—continued.

" Quebec, 11th December, 1854.

10 " Reverend and Dear Sir,

" I beg to intimate to you that it is the opinion of the Committee of Synod, appointed to watch the progress of Legislation in respect of the Clergy Reserves, that the Bill introduced by Government, having now passed both Houses of the Legislature, it is desirable that a meeting of Synod should be called as early as possible for the purpose of taking such steps as may be necessary to take advantage of the commutation clause in said Bill, and in the name of the Committee I beg very respectfully to request that you will call such meeting at the time and place you think most convenient.

20

" I am, Reverend and Dear Sir,

" Your faithful servant,

" (Sd.) JOHN COOK.

" We, the undersigned, hereby concur in the necessity of calling a special meeting of Synod at the earliest period the forms of the Church will admit.

" (Sd.) ALEX. MATHIESON,

" (Sd.) ROBERT MCGILL.

" The Reverend,

" The Moderator of the Synod of the

" Presbyterian Church of Canada

30

" in connection with the Church of Scotland.

" Kingston, 20th Dec., 1854.

" Reverend and Dear Sir:

" In compliance with a request addressed to me by the Convener and other members of the Committee appointed to watch over the progress of legislation in respect to the Clergy Reserves, to call a special meeting of Synod as early as possible for the purpose of taking such steps as may be necessary to take advantage of the commutation clause in the Act which has lately been passed by the Provincial Parliament, I have now to intimate to you that a special meeting of Synod will be held in St. Andrew's Church, Montreal, on the 10th

40 " January, 1855, being the second Wednesday of the month, at half past six, p.m.

" I am, Reverend and Dear Sir,

" Yours faithfully,

" (Sd.) JAMES WILLIAMSON, Moderator.

" P.S.—It has been thought by several of my brethren with whom I have conferred on the subject, and I concur in the opinion that, in the circumstances of the case, Montreal is, on the whole, the most suitable place for the said meeting of Synod on this occasion.

RECORD.

In the
Superior
Court.

No. 43.
Admission
of Parties,
filed 27th
June 1879.
continued.

" The Synod unanimously agreed to approve the moderator's conduct in calling this meeting.

" The Synod then called for the report of the Committee appointed to watch over the interests of the Church in regard to the Clergy Reserves, which was given in and read by Dr. Cook, the Convener, stating that the Bill for the Secularization of the Clergy Reserves, which had been introduced into Parliament by the Government, had been carried in both Houses, and assented to by the Governor-General:—That it contained a clause securing to all ministers settled previous to the 9th May, 1853, the date of the passage of the Imperial Act, payment of their salaries from the Clergy Reserve fund during their lives or incumbencies, and at the same time authorizing the Government to commute the claims of incumbents, with the consent of the parties and bodies severally interested, and that the Committee, for reasons which they stated, had not considered it expedient to interfere in any way with the passing of the said Bill, but feeling assured from many considerations that it would be for the benefit of the Church to take advantage of the commutation clause of the Act, the Committee had requested the moderator to call a *pro re nata* meeting of Synod to take the matter into consideration, and make the necessary arrangements; and the Committee further, and at great length, recommended that the Synod should agree to commutation.

" The Synod approved of the conduct of the Committee, and after some discussion, agreed to defer the further consideration of the report until tomorrow, and instructed the aforesaid Committee to draft resolutions to be then laid before the Synod for their consideration as to their action in the matter.

" The Synod agreed to spend a portion of time in the morning in devotional exercises.

" The Synod then adjourned to meet again at half-past eleven o'clock tomorrow forenoon, and was closed with prayer."

Diet II.

" At Montreal, and within St. Andrew's Church there;
" Thursday, the eleventh day of January, eighteen
" hundred and fifty-five years.

" The which day the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, met, according to adjournment, and was constituted with prayer.

" On the call of the moderator, the Reverend Dr. Cook conducted the devotional exercises of the Synod in praise, reading the Scriptures and prayer.

" The minutes of yesterday were read and approved.

" The Clerk stated to the Synod that he had received, a considerable time ago, a letter from the Inspector-General's Department of the Government, requesting him to make a return, to be laid before Parliament, of all persons connected with this Church, who at the date of the passing of the Act of the Imperial Parliament to make provision concerning the Clergy Reserves of this Province, viz., 9th May, 1853, were receiving any income or allowance from such portion of the proceeds of the Clergy Reserves as had been granted to

- “ the Synod of the Presbyterian Church of Canada in connection with the Church
 “ of Scotland, specifying the names and ages of such persons, the annual amounts
 “ of their allowance, and through whom it is paid; and that he had immedi-
 “ ately issued a circular to the several parties, requesting a statement of their
 “ ages to be returned to him—Mr. Allan, of Montreal, having kindly offered to
 “ furnish him with some other items—but that he had been as yet unable to
 “ make the required return, in consequence of a considerable number of the min-
 “ isters having neglected to make returns to him, although written to a second
 “ time on the subject; and that he had also, at the suggestion of some of the
 10 “ Clergy Reserve Commissioners, written to all of the parties whose names were
 “ on the roll for salaries. The Synod, while approving of the conduct of the
 “ clerk, directed him to use all diligence in procuring as soon as possible, the
 “ whole of the required information, and in transmitting to the Govern-
 “ ment the list of incumbents up to the 9th May, 1853, to furnish at the same
 “ time, the names of those since put upon the roll as having, in the estimation
 “ of the Synod, claims upon the fund.
 “ The Committee appointed yesterday to arrange measures for the consider-
 “ ation of the Synod, reported certain resolutions which the Synod proceeded to
 “ discuss at length.
 20 “ The Synod having heard the report of the Committee appointed by the
 “ Synod to watch over the interests of the Church, in so far as these might be
 “ affected by the action of the Legislature on the Clergy Reserves, and, also the
 “ verbal reports of such members of the Committee as had been in communication
 “ with members of the Government on the subject—and, having seriously and
 “ maturely considered that clause of the Clergy Reserves Act, lately passed by
 “ the Provincial Parliament at its present session, by which His Excellency the
 “ Governor in Council is authorized, with the consent of the parties interested,
 “ to commute the salaries or allowances of ministers chargeable for life or during
 “ their incumbencies on the Clergy Reserves fund, for their value in money :—
 30 “ Resolved,
 “ 1st. That it is desirable that such commutation, if upon fair and liberal
 “ terms, should be effected; and that the Reverend Alexander Mathieson, D.D.,
 “ of Montreal, the Rev. John Cook, D.D., of Quebec, Hugh Ailan, Esq., of Mont-
 “ real, John Thompson, Esq., of Quebec, and the Hon. Thomas McKay, of Ottawa
 “ City, be the Synod's Commissioners, with full power to give the formal sanction
 “ of the Synod to such commutation as they shall approve, the said Commis-
 “ sioners being hereby instructed to use their best exertions to obtain as liberal
 “ terms as possible; the Rev. Dr. Cook to be convener; three to be a quorum;
 “ the decision of the majority to be final, and their formal acts valid; but that
 40 “ such formal sanction of the Synod shall not be given except in the case of min-
 “ isters who have also individually given them, the said Commissioners, power
 “ and authority to act for them in the matter to grant acquittance to the Govern-
 “ ment for their claims to salary to which the faith of the Crown is pledged; and
 “ to join all sums so obtained into one fund, which shall be held by them till the
 “ next meeting of Synod, by which all further regulations shall be made; the
 “ following, however, to be a fundamental principle which it shall not be compe-

RECORD.

In the
Superior
Court.No. 43.
Admission
of Parties,
filed 27th
June 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 43.
Admission
of Parties,
filed 27th
June 1879.
continued.

"tent for the Synod at any time to alter, unless with, the consent of the ministers
"granting such power and authority; that the interest of the fund shall be devoted
"in the first instance, to the payment of £112 10s. 0d. each, and that the next
"claim to be settled, if the fund shall admit, and as soon as it shall admit of it, to
"the £112 10s. 0d. be that of the ministers now on the Synod's roll, and who
"have been put on the Synod's roll since the 9th May, 1853; and also, that it shall
"be considered a fundamental principle, that all persons who have a claim to such
"benefits, shall be ministers of the Presbyterian Church of Canada in connection
"with the Church of Scotland, and that they shall cease to have any claim on, or
"be entitled to any share of said commutation fund whenever they shall cease 10
"to be ministers in connection with the said Church.

"2nd. That so soon as said commutation shall have been decided upon and
"agreed to by the said Commissioners, the Rev. John Cook, D.D., of Quebec, shall
"be fully empowered and authorised, and this Synod hereby delegate to the said
"Rev. Dr. John Cook full power and authority to endorse and assent to the
"several powers of attorney from the individual parties on behalf of the said
"Synod, and in their name, and as their act and deed, as evidencing their assent
"thereto.

"3rd. That all ministers be, and they are hereby enjoined and entreated, (as
"to a measure by which, under Providence, not only their own present interests 20
"will be secured, but a permanent endowment for the maintenance and extension
"of religious ordinances in the Church) to grant such authority, in the fullest
"manner, thankful to Almighty God that a way so easy lies open to them for
"conferring so important a benefit on the Church.

"4th. That the aforesaid Commissioners be a Committee to take the neces-
"sary steps to get an Act of Incorporation for the management of the General
"Fund, so to be obtained; the aforesaid Commissioners to constitute the said
"Corporation till the next meeting of Synod, when four more members shall be
"added by the Synod.

"The Synod ordered the minutes of this meeting to be printed, and a copy 30
"sent to each minister as soon as possible, and they further instructed their Com-
"missioners, named above, to address a circular to the several ministers, showing
"them the importance of commuting upon the plan agreed to at this meeting,
"and giving them full information on the subject."

(b) From the last line of page 9, down to the words "fifty-five," line 23,
page 11, inclusive, being as follows:

"That the sole business submitted at the meeting of the said Synod of the
"Presbyterian Church of Canada, in connection with the Church of Scotland, at
"the diets thereof, held on the tenth and eleventh days of January, eighteen
"hundred and fifty-five, was the consideration of giving force and effect to the 40
"clause permitting the Governor of the then Province of Canada in Council to
"commute the claims of ministers, incumbents and missionaries upon the Clergy
"Reserves Funds, with the consent of the bodies and parties severally interested
"as set out in the minutes hereinbefore recited.

"That the said Synod, on its own behalf and on behalf of its members, de-
"termined at its said meeting to take advantage of the said commutation clause,

" and appointed a committee, styled Commissioners, to give effect to the said de-
 " termination, and the said Synod ordered said minutes to be printed, and in-
 " structed said committee to send a copy thereof to each minister entitled to
 " commute.

" That the said Reverend John Cook, Doctor of Divinity, was appointed
 " convener and chairman of said committee, and as such, was authorised to, and
 " did, address a circular to all the then ministers and incumbents of the said
 " Church entitled to benefits from the said funds, among others to the Petitioner,
 " which circular was in the following words:—

RECORD.

In the
 Superior
 Court.

No. 43.
 Admission
 of Parties,
 filed 27th
 June 1879.
 —continued.

" Quebec, 24th Feb'y., 1855.

" Reverend Sir,

" I am instructed by the Commutation Committee appointed at the last
 " meeting of Synod, to enclose to you two Powers of Attorney, approved by the
 " Government and by the Synod, which it is necessary you should sign and for-
 " ward to Hugh Allan, Esq., Montreal, without delay,—in order to our obtaining
 " a commutation of Clergy Reserve money, which will be advantageous to the
 " Church. All the ministers present at the meeting of Synod in January, agreed
 " to commute, and the ministers of the Church of England have unanimously
 " signed similar powers to those now forwarded to you.

" The fundamental conditions contained in the minutes of the Synod, held
 " at Montreal, on the 11th January, 1855, which are alluded to in one of these
 " powers, and which by the terms of the said minutes, it shall not be competent
 " for the Synod at any time to alter, unless with the consent of the ministers
 " granting such power and authority," are first, that the interest of the fund
 " shall be devoted in the first instance, to the payment of salaries of £112 10 0
 " each, to such ministers, and that the next claim on the fund shall be that of
 " ministers on the roll of the Synod, and who have been put on the Synod's
 " roll since the 9th May, 1853;" and second, " That all persons who have a
 " claim to such benefits, shall be ministers of the Presbyterian Church of Canada
 " in connection with the Church of Scotland, and shall cease to have any claim
 " when they cease to be ministers in connection with the said Church.

" Of these conditions it is presumed you will approve, and I have the satis-
 " faction to inform you, that on the terms proposed by the Government, and to
 " which the Commutation Committee are prepared to agree, as soon as these
 " powers are received from the ministers of the Church, it will be certainly pos-
 " sible to comply with the first condition, in so far as respects ministers settled
 " before the 9th May, 1853, and preserving the capital, to secure to them, from
 " the interest, salaries of £112 10 0 for life, or incumbency. And it is, there-
 " fore, earnestly entreated that there may be no hesitation or delay in signing
 " and forwarding these powers.

" I am further instructed to call your attention to the following resolution,
 " passed unanimously, at the last meeting of Synod:—

" That all ministers be, and they are hereby enjoined and entreated, (as to
 " a measure, by which, under Providence, not only their own private interests
 " will be secured, but permanent endowment for the maintenance and extension

RECORD. "of religious ordinances in the Church) to grant such authority as is necessary
 "to effect a commutation, in the fullest manner, thankful to Almighty God, that
In the "a way so easy is open to them for conferring so important a benefit on the
Superior "Church." Not doubting that you will concur in the views of the Synod.
Court.

No. 43.
 Admission
 of Parties,
 filed 27th
 June 1879.
continued.

"I am, Rev'd. Sir,
 "Your obdt. Servant,
 "(Sd.) JOHN COOK, Convener."

"To the Reverend—,"

"That Petitioner and other ministers and incumbents of the said Pres-
 "byterian Church of Canada in connection with the Church of Scotland, re- 10
 "nounced their individual rights in the said fund, or in the proceeds thereof,
 "and authorised the said John Cook to act for each of them and in their
 "behalf, for and by reason of the terms and conditions of the resolutions
 "passed at the said meeting of Synod on the tenth and eleventh January,
 "eighteen hundred and fifty-five."

(c) From line 33 on said page 11 down to the words "should be made" on
 line 10 of page 12, with the exception that the said Respondents do not admit
 the words "and the said Petitioner has never done anything to forfeit his right
 "to participate in the said fund, or in the proceeds, profits, or revenues thereof,"
 being as follows:—

"That on and since the ninth of May, eighteen hundred and fifty-three, the 20
 "Petitioner was entitled to the benefits derivable from the proceeds of the said
 "Clergy Reserves, (the whole as provided) under the said Imperial and Provin-
 "cial Acts relating thereto, [Respondents, however, alleging that since 1875
 "said Petitioner was only entitled to said benefits under the said amending Acts
 "of Ontario and Quebec], and on the ninth day of May, eighteen hundred and
 "fifty-three, Petitioner was in receipt of a stipend and allowance therefrom
 "amounting to upwards of one hundred pounds annually, and further at the date of
 "the passing of the resolutions of the said Synod in favor of the said commuta-
 "tion, to wit, on the eleventh day of January, eighteen hundred and fifty-five, 30
 "the annual value of Petitioner's stipend and allowance, forming a life claim
 "payable to him by and out of said sums, amounted to the sum of one hundred
 "and fifty pounds currency per annum, and the said Petitioner has never done
 "anything to forfeit his right to participate in the said fund, or in the proceeds,
 "profits or revenues thereof.

"That during the year eighteen hundred and fifty-five, and after passing of
 "the said resolutions by the said Synod, the said Petitioner did commute the
 "claims due to him as aforesaid, with the Government, by and through the
 "said Commissioners, upon the conditions set out in said resolutions, and the said
 "Petitioner did thereby consent to renounce his personal rights in the said 40
 "Clergy Reserves, or in the proceeds thereof (as hereinbefore set forth) in
 "favor of the said Presbyterian Church of Canada in connection with the
 "Church of Scotland, and did consent that the amount of the capital sum due
 "and to accrue to him, should be joined with the amount due and to accrue to
 "other ministers of the said Church, and that all sums thus obtained should be
 "joined into one fund, which should be held in trust by the said Commissioners,

"in the said resolution named, till the meeting of the Synod next ensuing, by which all further regulations should be made."

(d) The following allegation commencing on line 33 of page 12 of said petition, and ending on line 36 of the same, to wit :—

"The funds resulting from the original commutation claims of the ministers upon the Clergy Reserves, (as hereinbefore set forth) exclusive of all other contributions to it, amounted in eighteen hundred and fifty-five to the sum of £127,448 5 0."

(e) The last paragraph of said page 12, commencing with line 41 and ending with line 47, both inclusive, being as follows :—

"That afterwards, an Act of the heretofore Parliament of Canada was passed (22 Vic., cap. 66) to incorporate a Board for the management of the said fund, and for such other funds as should be contributed, subscribed or paid in, from time to time, and that it was therein declared, at the time of the passing of the said Act, the said funds were held in trust by certain Commissioners on behalf of the said Church, and for the benefit of the said Presbyterian Church of Canada, in connection with the Church of Scotland."

8. That the said last mentioned corporation continued to manage and administer the said fund arising from the original commutation, and divers other funds contributed for the purposes mentioned in the said last mentioned Act, until the 15th June, 1875, when the aggregate amount of the funds, assets and money under the control of the said last mentioned corporation amounted to the sum of \$463,371.52, at par value, according to statement dated 1st May, 1875, as set out in the Acts and Proceedings of the Synod of the said Church for 1875, in appendix "A."

9. That an Act was passed by the Legislature of the Province of Quebec (38 Vic., cap. 64) assented to on the twenty-third February, eighteen hundred and seventy-five, entitled an Act to amend the Act intituled: "An act to incorporate the Board for the management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," and providing for the administration and distribution of the funds held and administered under the Act of the late Province of Canada (22 Vic., cap. 66).

10. That the said Petitioner Dobie has since the year 1853, resided in the Province of Ontario, heretofore previous to the confederation of the Provinces known as that part of the Province of Canada designated Upper Canada.

11. That the number of ministers who had claims upon the said fund at the date of commutation was seventy-three.

12. That the domicile of the said Board Respondents, and their principal place of business is and always has been the City of Montreal.

13. That the notice in conformity with section 10 of the Act of the Quebec Legislature, being 38 Vic., cap. 64, intituled, "An Act to amend the Act intituled an Act to incorporate the Board for the management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," was published in the *Quebec Official Gazette*, on the 19th June, 1875, as appears by the copy of said *Official Gazette*, filed by the Respondents as their Exhibit No. 3².

RECORD.

In the
Superior
Court.

No. 43.
Admission
of Parties,
filed 27th
June 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 43.
Admission
of Parties,
filed 27th
June 1879.
—continued.

14. That the preamble basis and articles of the union of the 15th day of June, 1875, mentioned in Respondents' pleadings, are to be found in the Acts and Proceedings of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, for the month of November, in the year 1874, at pages — and on pages 4, 5 and 6 of said Petitioner's Exhibit "E'E," and the parties consent that the said printed copy of said preamble basis and articles of the union have the same effect and avail to the same extent as if the originals had been produced and duly proved in this cause, the Petitioner declaring that the whole is made without prejudice to the pretensions of the said Petitioner with respect to the effect of the said union upon the Presbyterian Church of 10 Canada in connection with the Church of Scotland, and upon Petitioner and the other ministers of said Church who did not join said union, and without prejudice to Petitioner's pretension that the Presbyterian Church of Canada in connection with the Church of Scotland has continued since 1875 and now exists as a distinct religious organization, the whole in so far as set forth in the pleadings in this cause.

15. That the printed pamphlet filed in this cause by the said Board, Respondents, as their Exhibit No. — contains a true copy of the Act of Incorporation of the said Board and of its by-laws, and of some of its resolutions adopted by the Synod of said Presbyterian Church of Canada in connection with the Church 20 of Scotland, and the parties consent that the said printed copies of by-laws and resolutions do have the same effect and avail to the same extent as if the originals had been produced and duly proved in this cause.

16. That the Reverend Robert Dobie, mentioned in the Acts and Proceedings of Synod filed herein, is the Petitioner.

Montreal, June 26th, 1879.

MACMASTER, HALL & GREENSHIELDS.

Attys for Petitioner.

JOHN L. MORRIS,

Att'y. for Respondents pleading. 30

(Endorsed.)

Admissions—Filed 27th June, 1879.

(Paraphed,) H. H. & G., P.S.C.

Schedule No. 58.

At Osnabruck, the seventh day of October, one thousand eight hundred and fifty-three years. The Presbytery of Glengarry met and was duly constituted.

Inter alia:

The Presbytery proceeded to hear Mr. Robert Dobie's trial for ordination according to the former appointment of Presbytery—and the same having been delivered, and the Presbytery having taken a conjunct view of the same were satisfied therewith. The Presbytery agreed to proceed with his ordination this day according to former arrangement.

The congregation being assembled were cited "*apud acta*" to state if they had any objection to the life and doctrine of Mr. Dobie, and no compearance having been made Mr. Bell proceeded to the pulpit and preached from Psalm 78, 5, 6, 7. He then put to Mr. Dobie the questions appointed to be put to ministers at ordination by act 10, Assembly, 1711—and Mr. Dobie having returned satisfactory answers—and he having also read over to Mr. Dobie the Act of Synod of 1844 anent the spiritual independance of this Church, and having received his assent and adherence thereto, the Presbytery did then by solemn prayer and laying on of their hands ordain the said Mr. Dobie to the office of the Holy ministry, and thereafter admitted him to the pastoral charge of the Congregation of Osnabruck and to all the rights and privileges belonging thereto. He then received the right hand of fellowship from the brethren present, when the Rev. Mr. McLaurin and the Rev. Mr. Scott delivered suitable addresses to the minister and people on their respective duties.

The public services being concluded, Mr. Dobie declared his willingness to sign the formula, when judicially called upon—and his name was added to the roll of the Presbytery.

(Signed) THOMAS MCPHERSON, Presby. Clerk.

Extracted from the records of the Presbytery of Glengarry.

JOHN S. BURNET, Presby. Clerk.

Martintown, June 8th 1878

(Endorsed.)

Respondents' Exhibit No. 3¹. filed with admissions—Filed 27th June, 1879.

(Paraphed) H. H. & G., P. S. C.

RECORD.

In the
Superior
Court.

No. 44.
(Respondents' Exhibit No. 3¹ filed with admissions) Copy of Extracts from the Records of the Presbytery of Glengarry, dated at Martintown 8th June 1878.

RECORD.

Schedule No. 59.

In the
Superior
Court.

1213.

VOL. VII.

No. 45.
(Respondents' Exhibit No. 3^d filed with admissions)
Copy of
Quebec
Official
Gazette,
dated and
published at
Quebec 19th
June 1875.
—Extract—
filed 27th
June 1879.



GAZETTE OFFICIELLE DE QUEBEC,

Publiée par Autorité.

QUEBEC OFFICIAL GAZETTE,

Published by Authority.

PROVINCE DE QUEBEC,

PROVINCE OF QUEBEC,

Quebec, Samedi 19 Juin, 1875.

Quebec, Saturday, 19th June, 1875.

Notice is hereby given in accordance with the requirements of the Statute of this Province, 38 Victoria, cap. 64, that the moderators of the Synod of the 10
Presbyterian Church of Canada, in connection with the Church of Scotland, of
the Synod of the Church of the Maritime Provinces in connection with the
Church of Scotland, of the Synod of the Presbyterian Church of the Lower Pro-
vinces, and of the General Assembly of the Canada Presbyterian Church, on
the fifteenth day of June, one thousand eight hundred and seventy-five,
severally, on behalf of their respective Churches, signed the articles of Union
agreed upon, as authorised by law and the Statutes in such case made and pro-
vided, whereby the said respective churches agreed to unite together and form
one body or denomination of Christians, under the name of "The Presbyterian
Church in Canada," and that the Union of the said four churches was, on said 20
fifteenth day of June, duly consummated.

CROSS, LUNN & DAVIDSON,

Solicitors on behalf of the Board for the Management of
the Temporalities Fund of the Presbyterian Church
of Canada in connection with the Church of Scotland.

Montreal, 15th June, 1875.

3246

Notice is hereby given, in accordance with the requirements of the Statute
of this Province, 38 Vic., cap. 62, that the moderators of the Synod of the Pres-
byterian Church of Canada in connection with the Church of Scotland, of the
Synod of the Church of the Maritime Provinces in connection with the Church of 30
Scotland, of the Synod of the Presbyterian Church of the Lower Provinces, and of
the General Assembly of the Canada Presbyterian Church, on the fifteenth day of
June, one thousand eight hundred and seventy-five, severally, on behalf of their
respective churches, signed the articles of Union agreed upon as authorized by

law and the Statutes in such case made and provided, whereby the said respective churches agree to unite together and form one body or denomination of Christians, under the name of "The Presbyterian Church in Canada," and that the Union of the said four churches was, on said fifteenth day of June, duly consummated.

RECORD.

In the
Superior
Court.

CROSS, LUNN & DAVIDSON,

Solicitors on behalf of the Presbyterian Church in Canada.

Montreal, 15th June, 1875.

3248

No. 45.
(Respondents' Exhibit No. 3)

filed with
admissions)

Copy of
Quebec
Official
Gazette,
dated and
published at
Quebec 19th
June 1875.

—Extract—
filed 27th
June 1879.
—continued.

(Endorsed.)

10 Respondents' Exhibit No. 5—d with admissions.—Filed 27th June, 1879.
(Paraphed) H. H. & G., P.S.C.

Schedule No. 60.

Reverend John McDonald, of Beechridge, in the Province of Quebec, aged sixty years, a witness produced on the part of the Petitioner, on this twenty-eighth day of June, eighteen hundred and seventy-nine, who being duly sworn, deposeth and saith:—I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

I was ordained in 1854 in the Presbytery of Glasgow, in Scotland.

Q. Were you ordained for the purpose of taking up any particular charge, and if so, what charge?

20 A. I got a commission from the General Assembly of the Church of Scotland through its Colonial Committee for the purpose of coming to Lochiel, in Glengarry, in the Province of Ontario. Having that in view, the Assembly, by this committee, enjoined the Presbytery of Glasgow to take me on trial for ordination, according to the rules of the Church.

Q. And you were ordained by the Presbytery of Glasgow?

A. Yes; I did not take charge of anything there, but sailed for Canada on the 13th of May following. I have now in my possession my commission from the General Assembly, through its Colonial Committee, and which reads as follows:

30 "At Edinburgh, the ninth day of February, eighteen
"hundred and fifty-four. At a meeting of the Acting
"Committee of the General Assembly Committee on
"Colonial Churches:

"Inter alia:

"Read letters from the Rev. Dr. Mathieson, Montreal, in regard to the
"vacancy at Lochiel, in the Presbytery of Glengarry; also minutes of that
"Presbytery dated 18th of January last, regarding the appointment of the Rev.
"John McDonald, Liverpool, to said charge. The Committee having considered
"this application, and being well satisfied of Mr. McDonald's gifts and qualities
40 "for the work of the ministry, did, and hereby do appoint him as minister of said
"Church of Lochiel, and direct an extract of this minute to be sent to Mr.
"McDonald.

No. 46.
Deposition
of the Rev.
John
McDonald,
produced by
Petitioner
28th June
1879.—
continued.

RECORD.

In the
Superior
Court.

No. 46.
Deposition
of the Rev.
John
McDonald,
produced by
Petitioner
28th June
1879.—
continued.

" The Committee further, considering that it will add much to the influence and usefulness of Mr. McDonald in the situation to which he has been appointed, should he go out as an ordained minister of this Church, agree to request the Reverend the Presbytery of Glasgow to take him on trial for ordination, according to the rules of the Church.

" The Committee also agreed to grant Mr. McDonald the sum of £45, for outfit and passage money.....

" Extracts from the minutes of the Colonial Committee.

" J. AYTON,

" Secretary *pro tempore*." 10

Q. After you were ordained you received a certificate or papers evidencing your ordination?

A. Yes, from the Presbytery Clerk, and I now exhibit the papers which I received, and which are certified by the Presbytery Clerk of the Presbytery of Glasgow, which documents are duly stamped, the same being in the words following :—

" At and within the Parish Church of Carmunnock, the
" thirty-first day of April, eighteen hundred and
" fifty-four years, which day the Presbytery of
" Glasgow being met and constituted 20

" *Inter alia* :

" Compared Mr. John McDonald and delivered all the discourses prescribed to him at last meeting with a view to his ordination, which severally and upon conjunct review were sustained. The Presbytery then proceeded to examine him in church history and the Greek and Hebrew languages, and were satisfied with his proficiency. Sermon suitable to the occasion was preached by the moderator, from Matthew 27th chapter 45th verse :—' Now from the sixth hour there was darkness over all the land until the ninth hour.' After sermon the moderator intimated to the congregation that Mr. McDonald having accepted an appointment by the Colonial Committee of the General Assembly of the Church of Scotland to the pastoral charge of Lochiel, in the Presbytery of Glengarry, Canada, had been taken upon trial for ordination by the Presbytery at the request of that Committee, and had acquitted himself to their satisfaction. He then put to Mr. McDonald the questions appointed by the 10th Act of Assembly, 1711, to be put to ministers before they are ordained, to all of which satisfactory answers were returned. Thereupon the moderator did, by solemn prayer to Almighty God and the imposition of the hands of the Presbytery, publicly ordained and set apart the said Mr. John McDonald to the office of the holy ministry. Thereafter Mr. McDonald was suitably addressed by the moderator on the duties of his office, with special reference to his appointment by the Colonial Committee. The brethren present gave him the right hand of fellowship. The Act against Simony, 1759, was read to him, and he judicially signed the confession of faith and the formula on all which instruments were taken, etc. 30 40

" Extracted from the records of the Presbytery of Glasgow.

" By JAMES SMITH, Presbytery Clerk.

"Certificate.

"At Carmunnock, the thirty-first day of March, 1854, the Presbytery of Glasgow being met and constituted, did and hereby do certify that Mr. John McDonald, one of their licentiates and this day ordained by them as minister of Lochiel, in the Presbytery of Glengarry, in Canada, is well and most favourably known to the members, for many of whom he has officiated with much fidelity and acceptance; that his conduct has been uniformly consistent with his professional character and prospects, and that he carries with him to the sphere of ministerial duty, on which he is about to enter, the high opinion and best wishes of all the brethren.

"Attested by James Smith, Pr. Cl."

On my arrival in this country, I proceeded to Lochiel and there presented the originals of the above documents to the Presbytery Clerk of Glengarry, and I was thereupon, namely, on the 24th of June, 1854, inducted by the Presbytery of Glengarry into the charge of said Lochiel, and I exhibit the certificate of my induction, which is in the following terms:

"I hereby certify that a memorial of the annexed certificate of induction was duly recorded in the Registry Office for the County of Glengarry, at the hour of eleven of the clock of Wednesday, the nineteenth day of July, in the year of Our Lord, one thousand eight hundred and fifty-four, in Liber 1st Lochiel, in folio 353, number of memorial 382; and the said memorial filed with the oath of allegiance of the Reverend John McDonald attached thereto.

"DONALD MACGILLIS, Dy. Reg.

"County of Glengarry.

"At Lochiel, and within the Presbyterian Church there, the 28th day of June, 1854.

"It is hereby certified that the Rev. John McDonald was this day inducted as minister of the Scotch Church and congregation in this place, by the Presbytery of Glengarry, in connection with the Church of Scotland.

"ROBERT DOBIE, Moderator.

"ANDREW BELL, Pry. Clerk, *pro tempore*."

Q. Was there any more formality about your coming to this country from Scotland and taking up the charge of Lochiel, than there would have been if you had taken charge of a parish in Scotland?

A. No, all proceedings were according to the law of the Church.

Q. Have you been ever since a minister of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. Ever since.

Q. Has that Church been in existence here in Canada ever since you came here?

A. Yes, and before I came here.

Q. Has there been any trouble in the Church since you came to Canada, and especially in 1875, and what was it?

A. Yes; some trouble arose in the Synod among the clergymen about the year 1870. A party of our Synod wanted to become united with the other Presbyterian bodies in the Lower Provinces and in this Province, whom we

RECORD.

In the
Superior
Court.

No. 46.
Deposition
of the Rev.
John

McDonald,
produced by
Petitioner
28th June
1879.—
continued.

RECORD.

*In the
Superior
Court.*

No. 46.
Deposition
of the Rev.
John
McDonald,
produced by
Petitioner
28th June
1879.—
continued.

always regarded as dissenters, not recognizing the Established Church at all ; but we have been all along ministers of the Established Church of Scotland. Both here, in this country, and in the old country we have adopted the same laws of procedure, and were ordained by the same rules, and acted according to the rules of the Church of Scotland.

Q. How did this trouble culminate in 1875 ?

A. The result was that the Synod was divided,—one side was a large majority against the other, but they were not unanimous.

Q. But what happened in 1875 ?

A. It came to a crisis ; they fixed a day for uniting, meeting with 10 these other bodies—these dissenters, and they fixed on the Skating Rink the 15th of June, on which day they wanted to walk from St. Paul's Church to meet the three bodies in the Skating Rink ; I was not there, but I was one of the minority that remained behind ; we remained behind and continued our sederunt as a Court, that is the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland. What grieved us exceedingly was the unhandsome and abrupt manner in which they treated us. They took away the records, the writing materials—the very ink and paper which we were using. But we considered them acting in violation of their ordination vows, namely, not to follow divisive courses in the Church 20 of Scotland, and that was the conviction on which we acted and do still act.

Q. You were then present on the 15th of June, 1875, when the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, was held in St. Paul's Church, Montreal ?

A. Yes.

Q. Had there been any protest against this union ?

A. A succession of protests to the proceedings of the Synod, not only in that year, but in preceding years, which the record of Synod will show.

Q. By whom were these protests made ?

A. By the minority in our Church, that is in the Presbyterian Church of 30 Canada in connection with the Church of Scotland.

Q. Do you remember particularly a notarial protest on that day ?

A. There were two protests. One on the preceding night and one on that day. The one on the preceding night was tabled by ourselves, as a minority, and the one on the succeeding day was the notarial protest, the moderator was served with that before he left the chair. By the succeeding day, I mean the 15th of June, 1875.

Q. You say that the members of Synod who went away from the Synod to the Skating Rink took with them the records and minutes of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland. Have 40 they since retained those records and minutes, so far as you know ?

A. Yes ; they have retained them and refused to give them up, as far as I know.

Q. Upon this body of members going over to the Skating Rink, what did the members do that were left behind ?

A. We continued the Diet of Synod.

Q. Did you name any chairman ?

A. Yes ; we named a chairman, the last ex-moderator present, or the one that was moderator before, and happened to be there then. Mr. Dobie, the Petitioner, was named chairman. We named as clerk the Rev. Robert Burnet, minister of the St. Andrew's Church, Hamilton. I was a member of said Synod at that time.

Q. From the 15th of June, 1875, down to the present time, have there been regular meetings of Synod of the Presbyterian Church of Canada in connection with the Church of Scotland ?

10 A. Yes, sir ?

Q. How often ?

A. We had annual meetings ; besides, we had other meetings called at the request of the moderator, when found necessary.

Q. Have you continued the same form of Church government and organization that you had prior to this large number of your Synod going over to the other bodies ?

A. We did, and intend to do it.

Q. Have you since that time continued your connection with the Church of Scotland in the same way as before ?

20 A. Yes ; that did not affect our connection at all. It did not affect the connection of the minority, the majority going away as they did. We are the constitutional party.

Q. But has the Church of Scotland continued to transact business with you as the Presbyterian Church of Canada in connection with the Church of Scotland, in the same way as it did prior to the 15th of June, 1875 ?

A. Yes, sir. Previous to 1875 there was a Correspondence Committee corresponding with the Church of Scotland, and it has been continued by us since then—in actual correspondence with the Colonial Committee of the Assembly at home, regularly, and we are recognized the same as before. And we do not anticipate that we will be ignored by the Church of Scotland, whatever people will say outside regarding us.

30 Q. Prior to the 15th of June, 1875, were the three bodies, to which this large number of your Synod joined themselves, and the Presbyterian Church of Canada in connection with the Church of Scotland, separate and distinct bodies ?

A. They were.

Q. Were there differences between the Presbyterian Church of Canada in connection with the Church of Scotland, and the Presbyterian Church of Canada, in Canada, at the time of this union ?

(Objected to as illegal, and not being in issue on the Petitioner's petition. Objection reserved).

40 A. Yes ; there were differences.

Q. Can you mention any difference with regard to the recognition of the Church of Scotland, or any other matter ?

A. They disapproved of our connection with the Church of Scotland as established by law. That is one thing.

Q. Was there anything in the basis of union which, to your mind, conflicted with your views as a clergyman of the Presbyterian Church of Canada in connection with the Church of Scotland ?

RECORD.

In the
Superior
Court.

No. 46.
Deposition
of the Rev.
John
McDonald,
produced by
Petitioner
28th June
1879.—
continued.

RECORD.

—
In the
Superior
Court.
—

No. 46.
Deposition
of the Rev.
John
McDonald,
produced by
Petitioner
28th June
1879.—
continued.

(Objected to as illegal, and not being in issue on the Petitioner's petition. Objection reserved).

A. The basis of union was introduced with the view of reconciling differences of opinion in the different parties. Unfortunately, in my humble opinion, it collided or clashed with our Confession of Faith. There was no necessity for a basis of union among Presbyterians who professed to believe in the Confession of Faith. We adopted and we act upon the Confession of Faith in its entirety. But there is a section of the Confession of Faith, which is the best section of all, because it is intended for the preservation of peace; that section was left an open question. The regulation of the Church of Scotland obliges us—obliges me 10 or any person that follows it—to sign the Confession of Faith, and to declare it to be my belief, and sign it in its entirety; that is the section which refers to the power of the Civil Magistrate, and is No. 23.

Q. I understand by your last answer that all clergymen joining the Church of Scotland in Scotland or the Presbyterian Church of Canada in connection with the Church of Scotland in Canada are obliged to give their entire adhesion to the Confession of Faith in its entirety?

A. Yes.

Q. Then I understand you further to say that, according to the basis of union, it is left optional with the ministers now joining the united Church 20 whether they shall give their full adhesion to this Confession of Faith or not?

(Objected to as illegal and not being in issue on the Petitioner's petition. Objection reserved.)

A. Yes; it is left an open question. A man may hold any opinions he likes now in that united Church with regard to that twenty-third chapter, so far as I know.

Cross-Examined without waiver of objections.

Q. You say you were inducted by the Presbytery of Glasgow in 1854?

A. Yes.

Q. Previous to being inducted, did you receive a call from the congregation 30 over which you were inducted?

A. No, and I will tell you why; there was no formal call, because the congregation of Lochiel empowered the Colonial Committee to select for them a minister that could preach in Gaelic and English; that is they sent home a call to be filled by themselves in favor of a person they thought competent to discharge the duties.

Q. And it was because they sent home that call to this Committee in Scotland to select a competent person that you were selected and came out to Canada?

A. My commission shows the origin of my coming to Canada. The request was sent home to the General Assembly's Committee by the late Rev. Dr. Mathieson, of Montreal, and the oldest minister in Glengarry at the time, the Rev. John 40 McKenzie, minister of Williamstown. These two were particularly concerned in getting a minister for Lochiel, and were very urgent for me to come.

Q. Is it not a fact that your coming to this country originated in the action of the congregation or representatives of the congregation at Lochiel in requesting either Dr. Mathieson or the Colonial Committee to select a suitable minister for them?

A. I believe that is implied. It was the good of the congregation that was kept in view in all the steps that were taken.

Q. They made the first motion, did they not, towards obtaining you—it did not originate with the Colonial Committee at all?

A. I cannot tell.

Q. Did you not say a few minutes ago that the congregation of Lochiel sent home a call?

A. I was told so, but it was subsequent to my coming here; it was in Lochiel that I was told so.

10 Q. Have you any doubt it was so?

A. I have no doubts in the matter; I have no reason to doubt honest men who wished to benefit their countrymen in Lochiel.

Q. At the time you were inducted over the congregation at Lochiel, is it not a fact that there was read over to you, and that you gave your assent to a document which is of record, among the records of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, passed by the Synod in 1844, and which is generally known as the Declaratory Act of Independence of the said Church?

A. Well, I will answer that question, if you will explain to me what is 20 your meaning of the Act of Independence.

Q. I will not explain to you my meaning of the Act of Independence, but want you to answer that question?

A. I know I did sign such an Act, but it was as regarded my ministerial duties that I would be subject to the direction of the Presbytery of Glengarry and the Synod of Canada, that was all—subject to the direction of the Synod in connection with the Church of Scotland.

Q. That Act is to be found amongst the records of the votes and proceedings of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, is it not?

30 A. Yes, since I knew you (Mr. Morris, counsel for Respondents) you acted upon that Act as well as I did.

Q. Is it not a fact that all ministers at their induction had to give their assent to the said Act, according to the rules of the said Presbyterian Church of Canada in connection with the Church of Scotland?

A. Of course; as far as in accordance with the laws and regulations of the Church of Scotland.

Q. Now, sir, is it not a fact that at the time of your induction you gave your assent, and as appears by the record, unqualifiedly, to that Act of Independence, and that there was no such statement made by you, that you did it in so far as 40 was in accordance with the laws of the Church of Scotland?

A. Unqualifiedly, no.

Q. Where is your qualification to be found expressed.

A. Whether expressed or not, it was understood by all the body of clergymen, that we were a subordinate branch of the Church of Scotland, guided by her laws both in religious duties and in its government.

Q. Then this qualification, you stated you made, was simply a mental reservation?

A. There was no mental reservation about it.

RECORD.

In the
Superior
Court.

No. 46.
Deposition
of the Rev.
John
McDonald,
produced by
Petitioner
28th June
1879.—
continued.

RECORD.

*In the
Superior
Court.*

No. 46.
Deposition
of the Rev.
John
McDonald,
produced by
Petitioner
28th June
1879.—
continued.

Q. Then was it written down and expressed in writing.

A. I did not say reservation; I said it was the implied understanding of the Synod, as a body, that we were a subordinate branch of the Church of Scotland, entirely dependent on her pecuniary resources.

Q. It was simply an implied understanding, then?

A. I think that is too much about one point.

Q. I ask you again; is it not a fact that that Act of Independence was read over to you at the time of your induction, and you stated then that you assented to it, without stating anything else in the way of qualification of such an assent?

A. I assented to it with this belief, with this conviction, that I was under the control of a Presbytery, as much in connection with the Church of Scotland as if I had been in Scotland. 10

Q. Now, is it not a fact that that Declaratory Act of Independence defines the meaning of the words "in connection with the Church of Scotland," which are to be found at the end of the name of said Church, to wit, the Presbyterian Church of Canada in connection with the Church of Scotland?

A. In reference to that I can say that that Act of Independence in connection with the Church of Scotland never gave satisfaction to the Synod for the last twenty years; they could never agree upon it, but it was allowed to stand on the record. I know one grave Doctor of Divinity wished it repealed. 20

Q. Did you ever move to have it repealed?

A. No; it did not come to that point.

Q. Did anybody move to have it repealed?

A. Not synodically; still they were complaining of the Act.

Q. You say that the question of union amongst the Presbyterian Churches came up in the Synod about the year 1870?

A. I am not exactly positive as to the year, but a few years previous to 1875.

Q. When it first came up in the Synod, did you oppose this union? or did you take part in its discussion?

A. No, I did not; because it did not come up regularly for discussion.

Q. The first time it came up regularly for discussion in the Synod, did you oppose it? 30

A. No; because I considered it more of a clerical agitation than a regular desire in the country for union.

Q. Is it not a fact that the question of union was discussed in the Synod about two years before you made any opposition to it?

A. It was discussed; but, according to my humble opinion, irregularly discussed; they were not in a position to discuss it according to the laws of the Church.

Q. Is it not a fact that it was discussed two years before you took objection to it?

A. I cannot answer that; I cannot charge my memory as to that, but since it was mooted it was my humble opinion all along that the Synod, as a body, were acting irregularly in the matter, and therefore, I never could believe that they would bring on a crisis notwithstanding. 40

Q. Do you not approve of the principle of union amongst Christian bodies?

A. If it is attended with peace, and if it does not injure one to the advantage of another.

Q. Now, you say that in 1875 the result was that the Synod was divided. Is it not the case that it was divided, on a resolution regularly brought up before the Synod, at a meeting of the Synod duly called?

A. No, sir; according to my understanding of Church law—I am not going to force my opinion upon you—but, according to my opinion, it was at variance with the Barrier Act.

Q. Did you take part in the discussion on the 14th and 15th of June, 1875, in Synod?

A. Not in the discussion, but when it came to the vote, I gave my vote against it.

Q. Now, you say that you and other members of Synod remained behind in St. Paul's Church, and did not take part in the union which was effected on the 15th of June; will you be kind enough to state how many ministers, who were present at said meeting of Synod, remained behind with you in St. Paul's Church, and did not take part in said union?

A. I cannot tell you how many remained behind, but they were part and portion of the sederunt.

Q. Will you be kind enough to tell me the names of the ministers who so remained? and if you cannot, I will refresh your memory.

A. I cannot tell all the names, for this reason, that some went away and came back.

Q. Tell all you know?

A. There were about twenty persons present; I do not know the names of all of them.

Q. Is it not a fact that the Rev. Robert Dobie, Rev. William Simpson, Rev. Robert Burnet, Rev. David Watson, Rev. J. S. Mullan, Rev. Thomas McPherson, and yourself, Rev. John McDonald, were the only ministers, members of said Synod, who remained behind in St. Paul's Church, after the other members repaired to the Victoria Skating Rink to consummate the said union, under the resolution which was then and there carried?

A. These were there, and they were the oldest members of Synod.

Q. The question is, whether any others were there?

A. There were others.

Q. I mean members of the Synod?

A. I know some went away and came back, and I do not know their names; they went away and came back, and went away to the Rink a second time; they were hesitating, what was their line of duty.

Q. How many went away and came back?

A. I cannot tell you?

Q. You do not know the names of any who went away and came back?

A. I can tell the names of some of them?

Q. Tell the names of some?

A. I am not going to implicate other people; they have left us, and I am not going to injure them.

Q. Then you decline to tell the names of any others who, you say, were present and who remained behind?

A. I am not obliged to tell; besides, there was such a crowd on that day.

RECORD.

—
In the
Superior
Court.

—
No. 46.
Deposition
of the Rev.
John
McDonald,
produced by
Petitioner
28th June
1879.—
continued.

RECORD.

*In the
Superior
Court.*

No. 46.
Deposition
of the Rev.
John
McDonald,
produced by
Petitioner
28th June
1879.—
continued.

Q. But you say you know of some, and you decline to give the names of these ?

A. I said that some went and came back, and went again.

Q. You said you knew the names of some ; will you give their names ?

A. Mr. Mullan was one.

Q. I am asking, if there were any others besides those I have just mentioned ?

A. Some others.

Q. Which others ?

A. Rev. Mr. Gray, minister of Thurlow, I think, in Ontario.

Q. Was he a member of Synod ?

A. Yes ; that is all I recollect just now.

Q. What took place then, when the majority, as you say, had gone to the Victoria Skating Rink. What was the next step ?

A. I have only to repeat what I said before.

Q. What was the next step ?

A. They separated.

Q. After they went away, what did you do that remained behind ?

A. We continued our sederunt.

Q. What did you do first ?

A. What any society would do, appointed a president or moderator when 20 the first one gets sick.

Q. Now, is it not a fact, that you first of all proposed as moderator the Rev. David Watson, of Thorah, immediately after the majority left for the Skating Rink ? Is it not a fact his name was proposed before Mr. Dobie's ?

A. No ; it is not a fact, as far as I know.

Q. Do you swear the name of Rev. Mr. Watson, of Thorah was not proposed at all as moderator ?

A. Not that I recollect.

Q. How did you constitute ? Did you constitute with prayer ?

A. We did not need to constitute ; we were constituted already.

Q. Did you open with prayer ?

A. No, we did not ; we engaged in devotion for Divine guidance in our deliberations, but not for constituting the Synod.

Q. Who held your devotions ?

A. I cannot tell you who held devotions ; if I recollect it was one of the oldest members present.

Q. Is it not the case, that it was the Rev. Robert Dobie, the man who you had assumed to elect as your moderator ?

A. I cannot tell ; the excitement was great.

Q. You cannot tell either that Scripture was read, I suppose ?

A. That would be constituting the Synod.

Q. I am asking whether it was or not ?

A. There was no constitution of the Synod there ; there was no reading of Scripture, because Scripture was read by you before you left. The Synod was constituted already ; we did not begin a new Synod at all.

Q. Is it not a fact that the Synod had been previously adjourned on that day? RECORD.

A. There was no adjournment; they left to join a new body and to assume a new designation in the Skating Rink. There was no adjournment of us as a Synod? we continued the sederunt.

Q. Nevertheless, was it not declared by that Synod, which you acknowledge yourself, that they adjourned to meet again in the Skating Rink?

A. That was a violation of the law, sir; that is what separated us.

Q. But I want an answer to the question?

10 A. We did not recognize that, that was not going to break us up.

Q. I repeat the question: Was it not declared by that Synod, which you acknowledge yourself, that they adjourned to meet again in the Skating Rink?

A. In so far as that applies to the majority who left, but could not disturb the minority in their duty.

Q. At the time when, as you say, you elected a moderator from among those who remained behind, was there a quorum present of fifteen members of Synod?

A. A quorum? Why, if you speak of a quorum, after the first day in the Synod, it is a rare thing; I do not know what was the original number of the 20 quorum, but that did not affect us, because we were a continuation of the Synod.

Q. Now, I want to know whether there were fifteen members of Synod present at the time or not?

A. I spoke of that already; I thought there were twenty, but I am not positively sure.

Q. Do you swear that there were fifteen members of Synod present then?

A. I have told already, as far as I know; I said that I thought there would be about twenty; but I may be wrong; I am not positive.

Q. Are you not aware that, according to the rules and regulations of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, it is there declared that a quorum of Synod consists of fifteen mem- 30 bers, of whom eight must be clergymen?

A. I said that, as far as I can recollect, there were about twenty.

Q. I repeat the question?

A. No; I was not aware of that before; I do not think it was ever declared in the Synod, that I attended, what was the original quorum?

Q. Will you look at the minutes of the said Synod, of date June 9th, 1868, contained in Petitioner's Exhibit "BBB," page 49 of the book entitled on the back "Minutes of the Church of Scotland, in Canada, 1855 to 1869," under the head of "General Provisions," section 1, sub-section 6, and state whether it is not there provided as follows: "To constitute a quorum of the Synod there 40 "must be present not fewer than fifteen members, of whom at least eight must "be ministers?"

A. At the first meeting of Synod, at the opening of Synod, I believe that is the rule that had been carried forth, but it has never been put in force at any subsequent meeting or in the sederunt; but we did not open the first meeting of Synod, we only continued the sederunt, therefore we did not need the fifteen

*In the
Superior
Court.*

No. 46.
Deposition
of the Rev.
John
McDonald,
produced by
Petitioner
28th June
1879.—
continued.

RECORD. members. As a minority in such a crisis that rule does not apply according to my opinion, nor according to equity.

*In the
Superior
Court.*

No. 46.
Deposition
of the Rev.
John
McDonald,
produced by
Petitioner
28th June
1879.—
continued.

Q. Was that rule, number six, ever repealed?

A. I am sorry you gave me so little time to study the laws and rules of Synod. I cannot answer that, and I am sorry I cannot answer it. I do not doubt what you say, but I cannot answer it. It is too far back—ten years.

Q. You say, you have had regular meetings of Synod since the 15th of June, 1875; can you tell me how many ministers were present at those different meetings of Synod?

A. I could not tell; we have a record; I did not commit the record to 10 memory, and I cannot tell you that without consulting the record.

Q. Do you mean the minutes that have been kept?

A. I mean the record.

Q. Where is the record?

A. I do not know.

Q. Do you mean the record that has been kept by the Rev. Mr. Burnet, Clerk?

A. Yes.

Q. Can you remember the names of the other Presbyterian bodies who did join together to make this union in 1875?

A. I cannot give the names exactly. There were our own body in the Province, there was the Free Church party, and there was the United Presbyterian Church, or a secession of the church party in the Lower Provinces and a secession of our own. These were the three in the Lower Provinces who met in the Rink; and also in Ontario and Quebec there was a section that left ourselves and the Canada Presbyterian Church. The records will show which they were.

Q. You have stated that you disapproved of the basis of union upon which said four bodies united. Is it not a fact that the Church of Scotland in Scotland has officially signified its intimation to the effect that it saw nothing whatever to object to in the said basis of union?

A. I cannot tell.

Q. Did you never see a resolution to that effect passed by the General Assembly of the Church of Scotland in Scotland?

A. I do not recollect seeing it, but if it is passed, there must have been a protest by a minority. I did not see it; I may be wrong.

Q. How can you say there must have been a protest, if you were not there?

A. According to the usual procedure of the Assembly. They are always ready to co-operate with other bodies for religious work, but that is different from organic union; it is not a reason for changing our designation.

Q. You say that you and those who adhered to you, in refusing to join the union, have since said union had correspondence with the Colonial Committee, in Scotland, of the Church of Scotland; what do you consider that proves?

A. It proves that the connection is unchanged; that we are a branch of the Church of Scotland in Canada, not dissenters, not a spurious name; we hold by the Confession of Faith as adopted by the Church of Scotland.

Q. Will you point out in what respects the said basis of union clashes with the Confession of Faith in your opinion?

A. I gave my personal impression at the time; I consider, in my humble opinion, it was an insult to the religious knowledge of Presbyterians in Canada and a substitute for the Confession of Faith, and that it was opening a door for heterodoxy in the Church; and also by abiding by the Confession of Faith we are restricted to certain doctrines and certain rules of procedure.

Q. Do you consider that the said Confession of Faith interferes in any way with your full liberty of conscience, in matters of religion.

A. I never felt it to interfere with my conscience, in matters of religion, but I felt it my duty to conform to its injunctions in matters of religion, especially in church government.

Q. Will you be kind enough now to look at Petitioner's Exhibit "EE," at pages 4 and 5 thereof, where the said basis of union is to be found, and point out the particular paragraph or clause in the said basis, which you say clashes with the Confession of Faith?

A. I consider leaving it an open question in the 23rd chapter of the Confession of Faith.

Q. Look again at the said basis of union, and show me, if you can, any reference therein to the said 23rd chapter of the Confession of Faith, or to leaving it an open question?

A. There was something about the 23rd chapter of the Confession of Faith; I do not think that is the exact copy that was sent to me, but I mind reading it in one of the remits that was sent to me.

Q. Then you cannot find it in the said basis of union now shown to you on pages 4 and 5?

A. It is my firm impression that it was in one of the remits that was sent to me accompanying the basis of union.

Q. Then, supposing it is not to be found in the said basis of union, you must admit that you have been mistaken in your ideas of the basis in question?

A. No; I am not mistaken. It is in the Confession of Faith. The basis of union was substituted for the Confession of Faith, to induce these different sects to unite, and I consider that a gross violation of our constitution hitherto.

Q. Are you aware that it is expressly stated in said basis of union that, "The Westminster Confession of Faith shall form the subordinate standard of this Church"?

A. According to my humble opinion then and now, a basis of union amongst Presbyterians separated from the Confession of Faith, was unnecessary, and has been, and is productive of evil.

Q. Look at the said Exhibit "EE" again and answer my question, yes or no?

A. I believe it can be embodied in it. But why adopt the basis of union and repudiate the Confession of Faith.

Q. Does the said basis of union repudiate the Confession of Faith?

A. I do not say it does; but why substitute it? It is so far ignoring the Confession of Faith as the Confession of our Church of Scotland, that is, as they substitute it. It is a departure—it is a deviation from the ordinary doctrine and government of the Presbyterian Church of Canada in connection with the Church of Scotland.

RECORD.

In the
Superior
Court.

No. 46.
Deposition
of the Rev.
John
McDonald,
produced by
Petitioner
28th June
1879.—
continued.

RECORD.

*In the
Superior
Court.*

No. 46.
Deposition
of the Rev.
John
McDonald,
produced by
Petitioner
28th June
1879.—
continued.

Q. Then do I understand your objection to the said basis or to union on the said basis, to be only that the said basis is substituted for the Confession of Faith and ignores the Confession of Faith?

A. It is an ignoring of the Confession of Faith so far that its very existence affects the Confession of Faith.

Q. That is your objection to the basis?

A. That is my humble opinion, I did not say objection. You may put in your own words if you like.

Q. You also stated in your examination-in-chief, as one of your reasons for objecting to the basis of union, that it was introduced with a view of reconciling differences between these four Presbyterian bodies, or to that effect; do you see any harm in endeavouring to reconcile differences between Christian bodies?

A. I see great harm in compelling Christian bodies in matters of religion before they agree amongst themselves, inasmuch as they have never been found to coalesce if so compelled.

Q. You have stated in your examination-in-chief that you considered the majority of said Synod, who passed the resolution on the 15th of June, 1875, to adjourn to the Victoria Skating Rink, were acting contrary to their ordination vows in following divisive courses from the Church of Scotland; what do you mean by that?

A. I meant to say from the Presbyterian Church of Canada in connection with the Church of Scotland, inasmuch as it is a violation of the Act of Assembly, 1711, which is read to every licentiate in the Church of Scotland, and to every minister when he is ordained or inducted to the Church here or in Scotland. It is the 10th Act of Assembly in the year 1711. That Act is read to every licentiate—every man that is ordained or is inducted in Scotland and also here.

Q. Is it read to every one who is inducted here?

A. As far as I know.

Q. What do you mean by "as far as I know?" How far do you know?

A. I understood it to be so.

Q. Did you ever hear it so read?

A. I think I did.

Q. Are you positive?

A. I have seen it neglected to be read.

Q. Do you swear positively that you ever heard it read?

A. I know it is an Act that has been read to every licentiate in Scotland, and I was licensed and ordained in Scotland. It was read to me, and in coming to this country I felt that I was then, as well as now, a minister of the Church of Scotland, although in Canada.

Q. Was it read to you when you were inducted here in Canada?

A. It was.

Q. Do you swear positively it was?

A. It was, as far as I recollect.

Q. Can you recollect positively?

A. My recollection is for twenty-five years; as far as I recollect, it was.

Q. But are you positive it was, on the oath you have taken?

A. I could refer to the record of Synod. A man's memory may be fallacious, but you can tell by referring to the record. As far as I recollect, it was read to me.

Q. Have you a distinct recollection it was read to you?

A. I said as far as I recollect.

Q. But I want to know how far you can recollect?

A. I said it was twenty-five years ago, and, as far as I recollect, it was read to me.

Q. Can you recollect of any other instance where it was read at the induction of a minister in Canada?

A. No; I cannot name any, because I was not so situated as to attend the inductions; I had too far to go. It was left to the local Presbytery, or the ministers of the locality, to do these matters, and to the Clerk of Presbytery particularly, but they were subjected to the review of Synod, and if anything was found irregular it was corrected.

Q. You stated, in your examination-in-chief, that the other Presbyterian bodies that took part in the said union, and particularly that one in the Lower Provinces in connection with our Church, protested against the Church of Scotland; is that correct or not?

A. No; I did not say protested; I said disapproved.

Q. Is it true that the Church of the Maritime Provinces in connection with the Church of Scotland, which took part in the said union, ever disapproved of the Church of Scotland or protested against it?

A. That question put to me, so far away from the Maritime Provinces, I think is irrelevant. I cannot answer that question.

Re-Examined.

Q. Will you please look at the basis of union in the said Exhibit "EE," and state whether the latter part of the second clause, being as follows: "It being definitely understood that nothing contained in the aforesaid confession or catechism regarding the power and duty of the civil magistrate, shall be held to sanction any principles or views inconsistent with full liberty of conscience in matters of religion," is not said portion that part of the said basis which you have above referred to as, in your mind, conflicting with the entire adherence to the Confession of Faith, particularly chapter 23rd?

(Objected to as illegal, leading on and putting the answer into the witness' mouth, who has already told us that he cannot see any such objection as he referred to in the said basis. Objection reserved by consent of parties.)

A. Yes; I think that is the part that refers to the 23rd chapter, and I always understood that the 23rd chapter was left an open question in the new or United Church, whether they signed it or not, or whether obligatory or not.

Correction.

On page eighteen of this deposition, where witness stated that "it was the implied understanding of the Synod as a body that we were a subordinate branch of the Church of Scotland, entirely dependent on her pecuniary resources," he desires to add that he did not mean to say "entirely," but "partly, at

RECORD.

In the
Superior
Court.

No. 46.
Deposition
of the Rev.
John
McDonald,
produced by
Petitioner
28th June
1879.—
continued.

RECORD. "times aided by grants from the Church of Scotland for missionary and religious
"work in this Province."

*In the
Superior
Court.*

And further deponent saith not, and this deposition having been read to him he declares it to contain the truth.

S. A. ABBOTT, Stenographer.

No. 46.
Deposition
of the Rev.
John
McDonald,
produced by
Petitioner
28th June
1879.—
continued.

Schedule No. 62.

Douglas Brymner, of the city of Ottawa, in the Province of Ontario, gentleman, aged fifty-five years, a witness produced on the part of the Petitioner this second day of July, eighteen hundred and seventy-nine, who, being duly sworn, deposeth and saith: I am not related, allied or of kin to, or in the employ of any 10 of the parties in this cause.

I am at present in the Civil Service, in the Department of Agriculture, and have been there for upwards of seven years.

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.

Q. Before that you were connected with journalism for some time in the city of Montreal?

A. Yes.

Q. What connection did you have with journalism?

A. I was a reporter and one of the editors of the *Montreal Herald*, and I was the editor of the *Presbyterian*, which was the recognized organ of the Presbyterian Church of Canada in connection with the Church of Scotland? 20

Q. How long were you the editor of the *Presbyterian*?

A. From 1864 down to the end of 1871.

Q. Did you hold the editorship with the approval of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. Yes, and in eighteen hundred and seventy-one I received a vote of thanks from the Synod, which was recorded in the minutes.

Q. What did you receive the vote of thanks for?

A. For the manner in which I conducted the *Presbyterian* in the interests of the Church?

Q. What Church are you a member of now?

A. Of the Presbyterian Church of Canada in connection with the Church 30 of Scotland.

Q. How long have you been a member of said Church?

A. Since eighteen hundred and fifty-seven.

Q. When did you come to this country?

A. In eighteen hundred and fifty-seven.

Q. Before coming to this country, where did you reside, and of what Church were you a member?

A. I resided in Scotland, and I was a member of the Church of Scotland and an elder of a parish.

Q. And when you came to Canada, how did it happen that you joined the 40 Presbyterian Church of Canada in connection with the Church of Scotland?

A. Because I understood, and still believe, it was a branch of the Church of Scotland, identical with the Church of Scotland in this country.

Q. After coming to Canada, did you take an interest in the affairs of the Presbyterian Church of Canada in connection with the Church of Scotland ?

A. I did ; I was appointed an elder in the congregation of Melbourne, in Lower Canada, a congregation of the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. Have you frequently attended meetings of Presbyteries and Synods ?

A. Yes.

Q. Are you familiar with the proceedings of the Courts or Tribunals of the Church ?

10 A. I am.

Q. Have you made any study of the laws relating to the Presbyterian Church of Canada in connection with the Church of Scotland and of the Church of Scotland in ecclesiastical matters ?

A. I have studied both carefully.

Q. In your capacity, for a great number of years, of editor of the official organ of the Church, have you had opportunities of being acquainted with such laws ?

A. I had opportunities, and in fact was obliged to make myself acquainted with them.

20 Q. I suppose you know that there was a large sum of money administered by the corporation, Respondents ?

A. Yes.

Q. Can you explain what was the origin of that sum of money, and how it was it came under the control of the Presbyterian Church of Canada in connection with the Church of Scotland ?

A. A certain proportion of the lands granted in Canada were to be devoted to religious purposes, for the maintainance of a Protestant clergy.

(Respondents object to witness stating what he can have no personal knowledge of, as, according to his own admission already given, he was not in this 30 country at the time when it is alleged in the Petitioner's petition, the said moneys came under the control of the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland, and this is a matter alleged by the Petitioner in his petition to be provided for and determined by Acts of Parliament and by acts and proceedings of the Synod of said Church, which speak for themselves and are not provable by parole evidence, and moreover have been already admitted by admissions signed by the parties to this case. Objection reserved by the Judge).

The members and adherents of the Church of Scotland in Canada made representations that they were entitled as natives of Scotland to receive, with the 40 sister Church of England, the benefits of the proceeds of what was known as the Clergy Reserves. In eighteen hundred and thirty-one, the adherents in Canada of the Church of Scotland formed themselves into a Synod under the name of The Presbyterian Church of Canada in connection with the Church of Scotland. Such Synod petitioned the King for a portion of the Clergy Reserves, on the ground that they belonged to the Established Church of a portion of the British Empire, and the words of the petition, to be found at page 20 Synod minutes, marked 3,3, eighteen hundred and thirty-one, are: "The claims of the Church

RECORD.

In the
Superior
Court.

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.

—continued.

RECORD. " of Scotland, and of all natives of that portion of Your Majesty's Dominions,
 " is founded upon the Act of Union between the two Kingdoms which guaran-
 " tees an equal communication of all rights and privileges to the inhabitants
 " of both."

*In the
 Superior
 Court.*

No. 47.
 Deposition
 of Douglas
 Brymner,
 produced by
 Petitioner,
 filed 2nd
 July 1879.
continued.

The provision was made for emigrants coming to Canada from Scotland, members of the Church of Scotland in Scotland. The same petition, page 20, says: " Provision having been made in that Act, as your Petitioners believe, fully
 " sufficient for the support of all the Protestant clergy of the Province, recog-
 " nised by the laws of the United Kingdom, it is not unreasonable that the
 " members of the Church of Scotland should desire to be placed on the same 10
 " footing with their fellow-subjects of the Church of England." In the same
 year a representation was made to the General Assembly of the Church of Scot-
 land, calling attention to the necessity for supporting their claims to the Clergy
 Reserves, beginning at page 15 of the same proceedings of the year eighteen
 hundred and thirty-one. In the year eighteen hundred and thirty-three, the
 Synod memorialized the General Assembly of the Church of Scotland, and at
 page 54 will be found these words of a resolution which was adopted: " And fur-
 " ther to crave the General Assembly to use its influence to secure to this Synod
 " all its legal rights as connected with 'The Church of Scotland.'"

In eighteen hundred and thirty-six, a petition was sent to the King by the 20
 Synod of the Presbyterian Church of Canada in connection with the Church of
 Scotland, complaining of the establishment of rectories by the Church of Eng-
 land in this Province, on the ground as stated in the petition that "they con-
 " ceive that said Act is a violation of the Treaty of Union, which entitles them
 " in a British colony to a communication of all rights, privileges and advantages
 " equally with the subjects of England." This petition will be found at pages
 115 and 116 of the Synod minutes of the year eighteen hundred and thirty-six,
 Exhibit 3,3. In the same year, and on the same page (116), is a letter to the
 General Assembly of the Church of Scotland, in the course of which, regret is
 expressed that the Imperial and Colonial Legislatures had come to no decision on 30
 the question of the Clergy Reserves. The letter says, page 118, second para-
 graph: " For, Fathers and Brethren, our hope of surmounting some of the diffi-
 " culties which are in our way, and of pursuing the high Christian enterprises to
 " which we are called, is, under the great Head of the Church, in your re-
 " sources." In the same year, eighteen hundred and thirty-six, appears a report
 of a special committee of Synod of the Presbyterian Church of Canada in con-
 nection with the Church of Scotland, which was adopted by the said Synod; and
 in reference to the payment by the Government of allowances from the Clergy
 Reserves, the report states at page 120: " It is further submitted, whether the
 " Synod, as being a spiritual court, ought not to decline the distribution among 40
 " its members of any bounty the Government may be pleased to confer, which
 " ought to be managed by the Government itself as heretofore, or by lay commis-
 " sioners appointed by it for that purpose."

In the same year (1836), an address to the Lieutenant-Governor of Upper
 Canada was approved by the Synod of the Presbyterian Church of Canada in con-
 nection with the Church of Scotland, and ordered to be engrossed, showing at
 page 122, these words: " We beg leave to express our desire and hope that your

"Excellency will be pleased to extend to the Church of Scotland in Canada your RECORD.
"protection, support and countenance, and encourage us in our endeavors to diffuse
"throughout the Province the knowledge and practise of religion and morality."

At page 123, of the same minute, appears a resolution of the Synod containing these words:— "That as the principles of this Synod, as a branch of the
"Established Church of Scotland, respecting the duty of Christian rulers to sup-
"port the true religion, are sufficiently declared in her standards, it is unneces-
"sary to emit any further declarations on this subject."

In eighteen hundred and thirty-seven, and in reference to a remonstrance of
10 the Synod of the Presbyterian Church of Canada in connection with the Church
of Scotland, on the distribution of the Clergy Reserves, appears on page 136 of
Exhibit 3,3, a report of a Committee of Synod, which was received by said Synod
and which says: "The deputation waited on his Excellency, and endeavored to
"represent to him the great necessity, as well as reasonableness, of special Govern-
"ment allowances to all the ministers of the Church of Scotland in the Province,
"and urged upon him the claim of those congregations which had been promised
"an allowance for their ministers so soon as they severally obtained them. The
"deputation regret that their application has been entirely fruitless, His Excel-
"lency persisting in his determination to surrender the management of the annual
20 "grant to the Synod."

At page 144 of the same year, eighteen hundred and thirty-seven, committees
were appointed by the said Synod in Canada to prepare certain memorials. With
reference to the first memorial the report states: "That a memorial be prepared
"for the Colonial Office setting forth the claims of this Church to a portion of the
"interest accruing from the proceeds of the sales of the Clergy Reserves," and
the Synod appointed a Committee to prepare said memorial.

In eighteen hundred and thirty-eight, as will be seen on page 170, Exhibit
3,3, of Synod minutes, the Synod adopted a preamble and resolutions on the re-
lations of the Presbyterian Church of Canada in connection with the Church of
30 Scotland and to the Civil Government, the preamble of which begins "That this
"Synod being deeply aggrieved by the unjust treatment which, as a branch of
"the Established Church of Scotland, they have received and are continuing to
"receive in this British Colony." On page 170, one of the resolutions says:
"To continue more energetically their correspondence with the General Assembly
"and other friends in Great Britain, and with Presbyteries and Synods in other
"British Colonies, inviting them to co-operate for the vindication of a just na-
"tional right, based on a treaty, the fundamental principles of which cannot be
"infringed without subverting the constitution of the British monarchy, viz., the
"right of our countrymen, throughout its Colonies, to an equal participation with
40 "the people of England in all civil and ecclesiastical privileges and advantages."

In eighteen hundred and thirty-nine, at page 194 of Exhibit 3,3, the said
Synod agreed by resolution "to solicit the Parent Church to send out a deputa-
"tion to enquire into the state of religion in general in this Colony."

In the year eighteen hundred and forty, at page 36 of the Appendix, is a
letter of the Committee on Colonial Churches of the General Assembly of the
Church of Scotland, from the said Synod in Canada, which states: "With respect
"to the legal and constitutional claims of this Synod as the representative of the

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

RECORD. "Church of Scotland in Canada for encouragement and support from the Civil Government, we have not thought it expedient during the present session to institute any proceedings."

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

At page 42 of the same Appendix, in eighteen hundred and forty, in a letter to the General Assembly of the Presbyterian Church in the United States, from the said Synod, are these words: "We are also happy in being able to inform you that we have now been relieved from the embarrassment of a long and painfully agitated question—the question of the Clergy Reserves—with the details of which it is unnecessary to trouble you, but which produced and kept alive an evil spirit of jealousy and rivalry between our Church and the sister Church of England; and that by the unanimous decision of the Judges of England a right of our Church to important privileges and advantages in this and other Colonial dependencies of the British Crown has been determined."

In eighteen hundred and forty-one, at pages 38 to 43 of the Appendix, is a memorial and protest of the Commission of the said Synod, addressed to the Colonial Secretary in relation to the Clergy Reserves, and at page 39 are the following words: "A sum nearly five times as large as that in the meantime secured to the Church of Scotland has been secured to the Church of England, and finally, of the portion of the Reserves allotted to the Established Churches of the Empire, the Church of England has received two-thirds, the Church of Scotland but one."

In the year eighteen hundred and fifty-one of Synod minutes, page 24, the said Synod passed resolutions with regard to the Clergy Reserves Fund. In the first resolution it is stated "that the Church of Scotland, of which this Synod is a branch." In resolution four, on the same page, are these words: "That ever since the formation of this Synod our ecclesiastical relationship has been acknowledged by the Parent Church in every way conformable to the constitution and our own ecclesiastical independence, and on this ground our ministers and people have for the last thirty years asserted the right to all the benefits of a connection with her as one of the Established Churches of the British Empire. Especially we long pleaded our legal claim to a portion of the lands in Canada set apart for the maintenance of a Protestant clergy, on the ground of the proper legal import of that designation and of the Treaty of Union between England and Scotland. The claim made on this special ground, and long resisted by certain parties, was at length adjudicated in our favour by the unanimous decision of Her Majesty's Judges in England." In the same resolution reference was made to the agitation for the repeal of the Clergy Reserves Act, and these words are used at page 25: "And in view of these unworthy designs the Synod declares and protests against any interference with the permanent rights determined by the Statute as a violation of those sound and stable principles on which the grandeur and security of the British dominion have hitherto rested, and which interference, should it unhappily prevail, will deprive coming generations of the benefits of a fund consecrated to the education of the moral and social being in his higher and nobler faculties. This Synod is not insensible to the importance of secular education in all its degrees, and in imitation of the Church of Scotland we will never cease,

“by all the means in our power, to advocate and promote it, though not by
 “the sacrifice of means set apart for the support and maintenance of public
 “worship and the propagation of religious knowledge. We cannot forget that
 “our higher function as a Church of Christ has reference to the religious and
 “spiritual well-being of our people, and that it is our duty to employ every
 “righteous means to frustrate any attempt that may be made to take from us the
 “guaranteed provision which enables us to accomplish more effectually the ends
 “of our vocation. We shall therefore continue to protest against any attempt to
 “subvert the existing law, not only on account of the detriment which would
 10 “ensue to the interests of religion, but also because it is incumbent on us to
 “resist the encroachments of a flagitious principle which would leave nothing
 “sacred in the social fabric, and which, were it to prevail, would inflict a serious
 “injury on the general well-being, not so much perhaps of the present generation
 “as on that which will follow.” At page 26, in the 6th of the said resolutions
 and concluding sentence of it, are these words: “The present ministers of this
 “Synod have only a very transient personal interest in the question, but it be-
 “longs to them to teach and to witness that the Church of Christ, though a
 “spiritual body, has legal rights and temporal possessions, which she ought to
 “defend, as she best may, to transmit not only undiminished, but enlarged, to
 20 “her perpetual posterity.”

In eighteen hundred and fifty-two of the said Synod minutes, page 27,
 appears an address of the said Synod to Her Majesty the Queen against the alie-
 nation of the Clergy Reserves, in which are these words: “We humbly beg leave
 “to submit to Your Majesty that a portion of the people of Canada cannot legi-
 “timately claim, even if they were disposed to do so, that lands appropriated by
 “the British nation, because within the Province of Canada necessarily belong
 “to the people of Canada, and are liable to be wholly diverted from the great
 “and pious objects for which they were intended.”

In an address to Her Majesty the Queen by said Synod, in June eighteen
 30 hundred and fifty-five, at page 26, are these words: “In view of the emigration
 “to this country of multitudes who have been accustomed to a public provision
 “for the maintenance of the ordinances of religion, it is much to be deplored that
 “the only provision of a public kind for the support of religion existing in this
 “Province, has lately been swept away by legislative enactment; and this is all
 “the more to be deplored considering the scanty and scattered state of the popula-
 “tion in the newly settled parts of the country, and the difficulties with which
 “emigrants have always to struggle for many years after a settlement.” On
 page 27, the address continues: “It is true that the individual rights of the ma-
 “jority of our ministers have been respected, though those of others have been
 40 “disregarded, and availing ourselves of the authority to commute our interests
 “given by the enactment in question, we shall endeavor in a spirit of self-denial
 “to place the matter in such a position as that the people may feel more loyal
 “than they would otherwise have done.”

In January, eighteen hundred and fifty-five, it was resolved to constitute a
 fund as a permanent inducement for the maintenance and extension of religious
 ordinances in the said Church, as shown in the minutes of said Synod, of January,
 eighteen hundred and fifty-five, embodied in the petition in this cause.

RECORD.

*In the
 Superior
 Court.*

No. 47.
 Deposition
 of Douglas
 Brymner,
 produced by
 Petitioner,
 filed 2nd
 July 1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
continued.

In June, of the same year, an address to His Excellency the Governor-General was adopted by the Synod, as shown at page 28, and which, after expressing regret that the Clergy Reserves should have been alienated, continues: "In order that this blow may follow as lightly as possible upon the general interests of religion, and more especially on the Church of which we are office-bearers, we desire to avail ourselves of the permission to commute the Reserve claims as provided for in the recent statute to which the Royal assent has been lately given, it being the desire of those of our number, whose pecuniary interests are involved therein, to constitute a fund towards the maintenance and extension of religious ordinances, in connection with the Church of Scotland in this Province."

In eighteen hundred and sixty, at page 61 Appendix, is an address from the members of the Board, Respondents, of the Presbyterian Church of Canada in connection with the Church of Scotland, containing these words: "It is well known to you that the public provision for the support of the Church was withdrawn some years ago by an Act of the Provincial Legislature, and that the amount received by ministers in commutation of the annual stipend secured to them for life, was by them, under certain conditions, made over to the Church to form a fund for the permanent support of the ministry."

The Presbyterian Church of Canada in connection with the Church of Scotland was formed on the suggestion of Sir George Murray to be the intermediary between the ministers of the Church of Scotland and the Government, but the Synod declined, as being a spiritual court, to act directly, and would only consent to act through means of the Commissioners who were elected by them, as appears by the Imperial Act of eighteen hundred and forty.

Q. How do you explain that the Presbyterian Church of Canada in connection with the Church of Scotland or its ministers had any claim to the property out of which the Temporalities Fund was constituted?

(Respondents object to witness stating what he can have no personal knowledge of, as, according to his own admission already given, he was not in this country at the time when it is alleged in the Petitioner's petition the said moneys came under the control of the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland, and this is a matter alleged by the Petitioner in his petition to be provided for and determined by Acts of Parliament, and by acts and proceedings of the Synod of said Church, which speak for themselves and are not provable by parole evidence, and moreover have been already admitted by admissions signed by the parties to this cause. (Objection reserved by consent.)

A. A claim was made by the adherents of the Presbyterian Church of Canada in connection with the Church of Scotland to be the Church of Scotland in Canada and the sole representative of the Church of Scotland in this Province, which claim was admitted by the Government and by the Church of Scotland in Scotland.

Q. What was the result of this claim so made?

(Respondents object to witness stating what he can have no personal knowledge of, as, according to his own admission already given, he was not in this country at the time when it is alleged in the Petitioner's petition the said moneys

came under the control of the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland, and this is a matter alleged by the Petitioner in his petition to be provided for and determined by Acts of Parliament and by acts and proceedings of the Synod of said Church, which speak for themselves and are not provable by parole evidence and moreover have been already admitted by admissions signed by the parties to the cause. (Objection reserved by consent.)

A. The claim was admitted by the Imperial Government as embodied in Acts of Parliament, and in consequence thereof the Presbyterian Church of Canada in connection with the Church of Scotland, was declared to be identical with the Church of Scotland, and to be entitled to and did receive its proportion of the proceeds of the Clergy Reserves.

Q. The Church of Scotland is an Established Church in Scotland, is it not?

A. Yes.

Q. And it has been since the Treaty of Union?

A. Since and before the Treaty of Union between England and Scotland.

Q. When was the first secession in Canada from the Presbyterian Church of Canada in connection with the Church of Scotland?

A. In eighteen hundred and forty-four.

Q. What name did those who seceded then take?

A. They took the name of the Presbyterian Church of Canada, dropping from its designation the words "in connection with the Church of Scotland."

Q. Did these ministers, who seceded in eighteen hundred and forty-four, organize a Synod of their own?

A. Yes.

Q. Did the ministers of the Presbyterian Church of Canada, just referred to, make a claim to share in the benefits of the Clergy Reserves?

A. They did.

Q. What was the result of their claim?

(Objected to, as not being susceptible of proof by parole evidence. Objection reserved by parties.)

A. The result was that it was refused, on account of their changed position.

Q. What do you mean by their changed position?

(Objected to, as not being susceptible of proof by parole evidence.)

A. Their changed position in relation to the Church of Scotland. They severed connection with the Church of Scotland by seceding from the Presbyterian Church of Canada in connection with the Church of Scotland, and forming a distinct Synod, after lodging a protest.

Q. Was their a claim to participate in the Clergy Reserves submitted by them to investigation?

(Objected to, as not being susceptible of proof by parole evidence. Objection reserved by parties.)

A. It was, to the Governor-General.

Q. What did the Governor-General do with it?

(Objected to, as not susceptible of proof by parole evidence. Objection reserved by parties.)

A. The Governor-General submitted it to the law officers of the Crown,

RECORD.

In the
Superior
Court.

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

RECORD. and it was by the decision of the law officers of the Crown that the claim was refused.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

Q. What was the decision of the law officers of the Crown?

(Objected to, as not susceptible of proof by parole evidence. Objection reserved by parties.)

A. That they were not entitled to participate, on the ground of their changed position towards the Church of Scotland.

Q. Are there any official minutes of this testimony, which you have just been giving, filed in this case?

(Objected to, as not susceptible of proof by parole evidence. Objection reserved by parties.)

A. Yes; it is to be found in the "Digest of the Minutes of the Presbyterian Church of Canada."

Q. Have you any personal knowledge of the secession from the Presbyterian Church of Canada in connection with the Church of Scotland in eighteen hundred and seventy-five?

A. I have.

Q. Were you, previous to then, in the habit of attending meetings of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. Yes, pretty frequently; I was several times a member of the Synod.

Q. Have you, and if so, how often, attended meetings of Synod of the said Church since June, 1875?

A. I have attended all except one since.

Q. Were you present at the meetings of Synod held on the fourteenth and fifteenth of June, eighteen hundred and seventy-five?

A. I was.

Q. Will you state, about what time the Synod met on the fifteenth of June, and what proceedings took place up to the time of this secession?

(Respondents object to witness proving this by parole evidence, being a matter susceptible only of being proved by the official records of acts and proceedings of the said Synod. Objection reserved by parties.)

A. The Synod met in the forenoon, somewhere about ten o'clock, on the fifteenth of June. The Synod was constituted in the usual way, certain business gone through, and then, in the course of business, Mr. Cushing, notary, appeared. There was a dead pause in the business while he went up to the moderator, namely, the presiding officer, Rev. Wm. Snodgrass, and presented the notarial protest to the moderator. Shortly after, the presiding officer and a number of others left the St. Paul's Church where the meeting was then being held.

Q. Did they leave any behind them?

A. Yes; they left behind them some members of Synod and some strangers.

Q. Were the proceedings of that meeting of Synod continued or discontinued?

A. Continued.

Q. The presiding officer, the moderator, having left, who was put in the chair?

A. One of the ex-moderators, Rev. Robert Dobie, Petitioner in this case.

Q. After he was put in the chair, can you state generally what was done? **RECORD.**

A. After he was put in the chair, it was agreed that he should offer prayer for Divine guidance, seeing the critical state of the Church, and that being done, business was proceeded with and brought to a conclusion, and the Synod adjourned.

Q. Did the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland meet afterwards?

A. Yes, every year since, sometimes twice a year.

Q. When was the last meeting of Synod?

A. At Toronto, in the month of June last.

10 Q. I understood you to say something about your attending meetings of Synod; how many of those meetings of Synod have you attended, of the Presbyterian Church of Canada in connection with the Church of Scotland, since the fifteenth of June, eighteen hundred and seventy-five? or, to put it in a different way, how many have you not attended since then?

A. I have missed one since then.

Q. Are you in a position to swear that the organization of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, has been regularly kept up since the fifteenth of June, eighteen hundred and seventy-five, notwithstanding the secession that then took place?

20 A. I can positively swear it.

Q. Has the Presbyterian Church of Canada in connection with the Church of Scotland, kept up its general Church organizations in Presbyteries and Congregations since that day?

A. Yes.

Q. At the present time, about how many ministers are there in connection with the Presbyterian Church of Canada in connection with the Church of Scotland, and laboring with it?

A. We have ten ministers, three missionaries and three retired ministers.

30 Q. How many congregations are there in connection with the said Church to which the ministrations of religion are supplied?

A. That is a little more difficult to answer, on account of the difficulty of obtaining statistics, but, to the best of my knowledge and belief, there are somewhere between thirty-six and forty.

Q. Would you state whether the adherents, members of the Presbyterian Church of Canada in connection with the Church of Scotland, are confined to any one place like the city of Montreal, or as to whether they are generally scattered throughout the Provinces?

40 A. They are scattered throughout the two Provinces of Ontario and Quebec—throughout the whole of the old Province of Canada. I may add that I have a perfect knowledge of that.

Q. I believe that you have taken a very active interest in the affairs of the Presbyterian Church of Canada in connection with the Church of Scotland, since you came to this country?

A. I have.

Q. Has your interest to any extent flagged since that secession in eighteen hundred and seventy-five?

A. It has certainly not in the Presbyterian Church of Canada in connec-

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

tion with the Church of Scotland, but on the contrary it has increased; there was not such a particular need of my interest before; things seemed to be going on well.

Q. You, of course, are a member of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. Yes.

Q. You have never seceded from it?

A. Never.

Q. Did those who seceded, or those who remained, have a majority of members on the Board, Respondents?

A. Those who seceded have a majority of members.

Q. You spoke of those who seceded in eighteen hundred and forty-four as having taken the name of the Presbyterian Church of Canada; have they any relationship? and if so, what, with the Canada Presbyterian Church, that appears as one of the co-partners in the amalgamation, out of which the Presbyterian Church in Canada is the result?

A. There were two Presbyterian bodies, besides the Presbyterian Church of Canada in connection with the Church of Scotland, the one you have just spoken of, and another called the United Presbyterian Church. In eighteen hundred and sixty-one, these two united under the name of the Canada Presbyterian Church.

Q. Are the interests of the Petitioner in this suit simply personal?

(Respondents object to the question as illegal and irrelevant to the issues, inasmuch as the interest of the Petitioner is disclosed in the Petitioner's petition. Objection reserved by parties).

A. No; he is acting in the interests of the whole Presbyterian Church of Canada in connection with the Church of Scotland.

Q. This Presbyterian Church in Canada is composed of those who seceded from the Presbyterian Church of Canada in connection with the Church of Scotland and the three other Churches mentioned in the petition?

A. Yes.

The examination of this witness is adjourned.

And on this third day of July, of the year aforesaid, the witness, Douglas Brymner, reappeared and continued his evidence as follows:

Q. Is the Presbyterian Church in Canada identical with the Presbyterian Church of Canada in connection with the Church of Scotland?

(Objected to as being a question of law which it is not competent for the witness to decide. Objection reserved by the Court).

A. No: they are distinctly different.

Q. Will you please point out why they are not identical?

A. There are distinct differences in the obligations taken as to the Confession of Faith; there are differences in respect to the constitution of the Churches. The Presbyterian Church of Canada in connection with the Church of Scotland is a branch of the National Church. The Presbyterian Church in Canada is largely composed of dissenters and voluntaries who take obligations differing widely from the ministers and office-bearers of the Presbyterian Church of Canada in connection with the Church of Scotland and of the Church of Scotland.

Q. What are the distinct differences in the obligations taken as to the Confession of Faith? RECORD.

(Objected to, as illegal and irrelevant. Objection reserved by the parties.)

A. In the formula or obligation to be subscribed on ordination or induction of ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, to be found among other places in minutes of Synod for eighteen hundred and sixty-seven, page 35, are the following words: "I do hereby declare that I do sincerely own and believe the whole doctrine contained in the Confession of Faith, approved by the General Assemblies of the Church of Scotland
10 "and ratified by law in the year 1690, and frequently confirmed by divers Acts of Parliament since that time, to be the truths of God. And I promise that I shall follow no divisive course from the Presbyterian Establishment in this
"Church." In the basis of union, to be found in the "Acts and Proceedings of the first General Assembly of the Presbyterian Church in Canada," filed in this cause as Petitioner's Exhibit "E E," page 5, are to be found the words: "The Westminster Confession of Faith shall form the subordinate standard of this Church;" and in the same sentence, at the end, are the words: "It being distinctly understood that nothing contained in the aforesaid Confession or catechisms regarding the power and duty of the civil magistrate shall be held to sanction any
20 "principles or views inconsistent with full liberty of conscience in matters of religion." At page 6, of the same Exhibit, under the head of "Government Grants to Denominational Colleges," are found these words: "In the united Church the fullest forbearance shall be allowed as to any differences of opinion which may exist respecting the question of State grants to educational establishments of a denominational character," this forbearance having reference to the peculiar doctrines held by the Church of Scotland and by her branch in Canada.

Q. I understand, then, that ministers joining the Presbyterian Church in Canada are not obliged to give their adhesion to the Confession of Faith in its
30 entirety in the same manner as ministers joining the Church of Scotland in Scotland, or the Presbyterian Church of Canada in connection with the Church of Scotland?

(Objected to, as illegal and not in issue. Objection reserved by parties.)

A. No, by the basis of union that is a matter that is optional.

Q. Do you know when the ministers are paid their annual stipends out of the fund of the Board, Respondents?

A. The checks, as I have always understood, are issued on the first of July and on the first of January, being every six months.

Q. Are you aware that various protests were made on behalf of certain
40 members of the Presbyterian Church of Canada in connection with the Church of Scotland, against the union which was in question?

A. I am.

Q. Could you point out from the minutes of various meetings of Synod any places where the said protests are recorded?

A. In eighteen hundred and seventy-three, according to Synod minutes for that year, at page 35, is a dissent with reasons given in, by Mr. Mitchell, a member of that Synod, and adhered to by Messrs. David Watson, Lang, McPherson,

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

RECORD. Davidson, McGillivray, Wright and Lanskil. In eighteen hundred and seventy-four, at Ottawa, Synod minutes pages 33 and 34, is a long protest on the same subject. At page 9 Synod minutes for November, eighteen hundred and seventy-four, I find a protest against the Synod discussing the question of union at a meeting held in violation of the Constitution. At page 14 of Synod minutes of November, in the same year, appears a protest signed by the Petitioner and others, declaring that no majority could take from them the rights which they possessed as members and adherents of the Presbyterian Church of Canada in connection with the Church of Scotland, said protest being in connection with the then proposed union. At page 16 of the same Synod minutes, is a protest by 10 the Rev. James Wilson against the proposed union. In the Synod minutes for eighteen hundred and seventy-five, page 29, is a dissent against certain resolutions respecting said union. At page 30 is another dissent against the proposed union. At page 35 of the same Synod minutes, is a protest signed by Petitioner and others against the said resolutions on union. There was also a notarial protest served on the fifteenth of June, eighteen hundred and seventy-five, previous to the seceders leaving St. Paul's Church, in which proceedings were being conducted.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
continued.

Q. You are a native of that part of Great Britain and Ireland called Scotland? 20

A. Yes.

Q. You were admitted a member of the Church of Scotland in Scotland?

A. I became a member by baptism.

Q. Were you an elder of a Church in Scotland?

A. I was.

Q. What year did you come to the Province of Quebec.

A. In eighteen hundred and fifty-seven.

Q. Did you become an elder in Quebec?

A. Yes, of the congregation in Melbourne, Presbytery of Quebec?

Q. On what ground were you admitted to an eldership in the Church? 30

A. I was received on my certificate of eldership and inducted without any further proceedings. The two Churches were in ministerial and Church communion, that is to say, the Presbyterian Church of Canada in connection with the Church of Scotland, and the Church of Scotland. I think I should explain that the Church of Scotland was what is known as a close communion Church at that time, that is, that no minister was received into the pulpit except a minister of the Church of Scotland, or a licensed minister in connection with a branch of that Church; and no communicant was admitted to the Lord's table unless he, or she, was a member of the Church of Scotland, or recognized as a member of a branch of the Church of Scotland. 40

Q. Has this communion between these two Churches always existed?

A. Always existed. That communion was set out in the Synod minutes of eighteen hundred and thirty-three, page 43, in which the Church of Scotland declared that members of congregations in Canada under the charge of ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, should be received as members in Scotland of the Church of Scotland on producing certificates from the session under whose jurisdiction they were.

Q. Were any overtures made by the Presbyterian Church of Canada in connection with the Church of Scotland towards the Presbyterian Church of Canada, or by the Presbyterian Church of Canada towards the Presbyterian Church of Canada in connection with the Church of Scotland subsequent to the secession of eighteen hundred and forty-four, with a view to repairing the breach that had occurred, and if so, what was the result of such overtures, and what were the reasons respectively alleged for their non-success?

(Objected to as illegal and entirely irrelevant to the issues raised in this case. Objection reserved by parties.)

- 10 A. In the Synod minutes of September, eighteen hundred and forty-four, marked "BBB," page 30, is a minute of a resolution of the said Synod to appoint a committee to confer with those who had seceded from the said Synod in July, eighteen hundred and forty-four, with a view to the restoration of union between them. In eighteen hundred and forty-five, as appears by Synod minutes of that date, page 14, is the report of the committee named as just mentioned, in which it is stated that the sentiments unequivocally expressed by the seceders in regard to the Church of Scotland were such that the committee concluded to hold them as a bar to all negotiations. In the year eighteen hundred and forty-four the Synod of the Presbyterian Church of Canada appointed a committee to meet with a
- 20 committee of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland with a view of negotiating about re-union with the latter body as appears from the "Digest of Synod minutes of the Presbyterian Church of Canada," page 275. In eighteen hundred and forty-five the committee of the Presbyterian Church of Canada reported that the negotiations had been unsuccessful, the committee from the Presbyterian Church of Canada in connection with the Church of Scotland having been disposed to lay great stress on the act passed by their Synod, declaring the spiritual independence of their Church, but entirely indisposed to entertain any proposal for dissolving the connection between their Synod and the Scottish Establishment, or altering the designation of the Synod, as will be seen by reference to page 277 of said Digest, filed as Petitioner's Exhibit "LL."

Q. After the secession in eighteen hundred and forty-four was anything done in the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland by way of calling over the names of those who had seceded?

(Objected to as illegal and entirely irrelevant to the issues. Objection reserved by the parties.)

- A. In Synod minutes for September, eighteen hundred and forty-four, at pages 20 and 21, will be found a statement of the steps taken to declare those who had seceded in the previous July no longer ministers of the Presbyterian
- 40 Church of Canada in connection with the Church of Scotland or of the Church of Scotland in Canada.

Q. Will you point the page and the minutes of Synod, where you find the report to which you have already referred, of the law officers of the Crown, in which they stated, as you have said, that the allowances to those persons who had seceded could not be continued on account of the new position in which they stood.

(Objected to as illegal and entirely irrelevant to the issues. Objection reserved by the parties.)

RECORD.

In the
Superior
Court.

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.

—continued.

RECORD.

—
In the
Superior
Court.
—

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

A. At page 411 of the Digest, Exhibit "LL," is a memorial addressed to the Governor-General praying for the continuance of the allowances from the Clergy Reserves. The memorial was from those who had seceded from the Presbyterian Church of Canada in connection with the Church of Scotland, in July, eighteen hundred and forty-four, and who had been declared no longer ministers of that Church, or of the Church of Scotland in Canada, but who had formed themselves into a Synod under the name of the Presbyterian Church of Canada, asking that they might be continued in their allowances from the Government on the ground therein stated. At page 412 of the same book is a report made to the Synod by the moderator, that in answer to the aforesaid memorial the memorialists could not be continued in the enjoyment of the Government allowances on account of the new position in which they stood?

Q. You are the Mr. Brymner, are you not, who made the affidavit filed in this case on the fourteenth day of March, eighteen hundred and seventy-nine?

(Objected to as illegal and having nothing to do with the issue as raised on the merits of this case. Objection reserved by the parties).

A. I am the same individual.

Q. In speaking of your knowledge of the law relating to the Church of Scotland and to the Presbyterian Church of Canada in connection with the Church of Scotland and the records thereof, have you studied the standard works of these bodies relating to those subjects?

A. Yes.

Cross-Examined without waiver of objections.

Q. You have stated in your examination-in-chief that in the year eighteen hundred and forty-four certain seceders left the Presbyterian Church of Canada in connection with the Church of Scotland, and formed the Presbyterian Church of Canada; where did these seceders meet at the time of the secession referred to?

A. They met in Kingston, Ontario.

Q. Were not said seceders in a minority of the said Church, and did they not leave the said Church without pretending in any way thereafter to represent the said Church?

A. Before any vote was taken a protest was entered on the ninth of July, eighteen hundred and forty-four, that no matter whether a majority should decide or not to change the designation, title or constitution of the Synod, or Church, or of the relations thereof to the Church of Scotland, that any majority attempting to do so would be acting unconstitutionally and *ultra vires*, and that those who remained in connection with the Church of Scotland, be they few or many, would remain and continue to be the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, and enjoy all the rights and privileges belonging to the same, as will be found in Synod minutes for July, eighteen hundred and forty-four, page 22. As a matter of fact, those who seceded were a minority. They did claim, however, to be entitled to hold the property of the Church from which they had just seceded.

Q. You have not answered my question fully; did the said seceders not declare that they had seceded from or left the said Church, and did they pretend to claim, after so leaving, that they were the Presbyterian Church of Canada in connection with the Church of Scotland?

A. Their whole claims are found set out in their organization, and a protest lodged previous to leaving, which will be found at pages 2, 3, 4, 5 and 6 of Exhibit "L.L.," filed in this case.

Q. Will you kindly answer my question, yes or no?

A. I can answer no further than I have done.

Q. Before the said seceders, of whom you have spoken, left, in eighteen hundred and forty-four, the said Presbyterian Church of Canada in connection with the Church of Scotland, were they in a minority or in a majority of the said Synod?

10 A. Being defeated on a motion to sever connection with the Church of Scotland they were in a minority.

Q. Consequently it appears that there is no analogy between the case of the seceders who went out in eighteen hundred and forty-four from the Presbyterian Church of Canada in connection with the Church of Scotland and the seceders from the said Church represented by the Reverend Robert Dobie, the Rev. Gavin Lang and others, who went out from the said Church in the year eighteen hundred and seventy-five?

A. In the first place, I do not acknowledge that the Rev. Robert Dobie and others were seceders; they remained in connection with the Church of Scotland.

20 The other part of the statement is a constitutional question which must be solved by the Judges.

Q. The Rev. Robert Dobie and the others who dissented from the resolution of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, passed in the year eighteen hundred and seventy-five, relative to the union in question in this cause, were in a minority of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, were they not?

A. They were a minority in the Synod.

Q. Were they in a minority in the Church?

30 A. The Church is composed of the whole body of the people, the Synod being a mere committee for the management of the ecclesiastical and spiritual affairs of that body.

Q. Were they not in a minority in the whole Church, on the oath you have taken?

A. From the very best information it is possible to get, the question is not yet determined.

Q. Those seceders, in eighteen hundred and forty-four, after leaving the Presbyterian Church of Canada in connection with the Church of Scotland, organized a Synod of their own, did they not?

40 A. They did.

Q. And they called themselves the Presbyterian Church of Canada?

A. Yes.

Q. Then, as a matter of fact, seeing that after leaving the Presbyterian Church of Canada in connection with the Church of Scotland, they set up a Synod of their own and called themselves the Presbyterian Church of Canada; is it not true that they did not pretend to be the Presbyterian Church of Canada in connection with the Church of Scotland?

RECORD.

—
In the
Superior
Court.

—
No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
continued.

A. Perfectly true. They set up a hostile, separate and independent organization, and further, they changed the obligation to be taken by ministers of the Church of Scotland and of the Presbyterian Church of Canada in connection with the Church of Scotland at their ordination and induction.

Q. What do you mean by the term secession which you have used in your examination-in-chief on several occasions, with reference to anybody seceding from a church?

A. Those who secede from a Church are those who sever their connection with it and change its terms of communion—change its doctrines.

Q. You say in your examination-in-chief that you have been in the habit of attending meetings of Synods of the Presbyterian Church of Canada in connection with the Church of Scotland, for a number of years; how long since you attended meetings of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, in a representative capacity?

A. I could not be quite sure as to that point. I was an elder in St. Gabriel Church, Montreal, down to the year eighteen hundred and seventy-two. The first meeting of Synod I attended was in eighteen hundred and fifty-eight, and I was an elder in St. Gabriel Church down to eighteen hundred and seventy-two, from the time I came into Montreal until I left. I then left St. Gabriel Church and went to Ottawa, with the very strongest possible recommendation to the session in St. Andrew's Church, Ottawa.

Q. Have you ever attended a church court of the said Church since you left the congregation of St. Gabriel Church, Montreal, in a representative capacity under the laws of the Church?

A. I have not.

Q. Do you represent any congregation now?

A. I do not.

Q. How does it happen that in the minutes which have been filed in this cause by the Rev. Gavin Lang, who was examined in your presence, marked Z1, you appear to be taking part in moving resolutions as a member of the pretended Synod referred to in said minutes, if you had no authority to represent any Kirk-sessions in church courts?

A. According to the laws and practise of the Presbyterian Church of Canada in connection with the Church of Scotland, any member of the Church occupying a position either as minister or elder can be called upon to sit and deliberate with the Synod; it is the invariable practise; I had a perfect right to move or second a resolution; that is the practise; there is no law on the subject; under such practise I, being present as an elder of the Presbyterian Church of Canada in connection with the Church of Scotland, was asked to sit and deliberate, and I thus became entitled to take part in all the proceedings of Synod.

Q. Were you a member of the said Synod in which you say you were asked to take part and deliberate?

A. I was a visiting member.

Q. Will you show me the law which entitles you as such, not being a regular member of Synod, to take part in the proceedings of Synod and to move resolutions?

A. I will show you the practise. In eighteen hundred and fifty-six, Rev.

Wm. Snodgrass, then a minister in Prince Edward Island, being present at the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, was asked to sit and deliberate with the court, and I find him seconding a resolution in regard to the commutation funds.

Q. Is that all you have got to show on that point?

A. I can give you twenty instances.

Q. Well, give them to me?

A. At this moment, not having looked into the question, it would take me longer than would be convenient, but I will give them to-morrow morning.

10 *Q.* Then your statement, made just now, that you could give me twenty instances of such practise was rather rash and without having verified your statement, was it not?

A. When I said so I spoke from a knowledge of the practise of the Church and as having been present at the Synods.

Q. And yet you cannot verify your statement, although you made it in such a positive way?

A. To-morrow morning I will supply all the information.

Q. Is it not true that no one who is not a regular member of Synod according to the laws and practises of the Presbyterian Church of Canada in connection 20 with the Church of Scotland, that is to say, an elder representing a Kirk-session, duly appointed, has any right to take part in the proceedings of Synod, move resolutions and be appointed on committees unless it be that he is a corresponding member of Synod, such as Dr. Snodgrass, whom you have referred to, was?

A. The practise, so far as I know it, is that those who are present, whether they belong to the Church or not, ministers and elders not only of the Presbyterian Church of Canada in connection with the Church of Scotland, but of other Churches, have been repeatedly asked to sit and deliberate with the courts.

Q. Please answer my question. Beyond sitting and deliberating, have the persons referred to in the last preceding question, that is to say, those who are 30 not regularly appointed members of Kirk-sessions or who are not corresponding members, any right to move resolutions or be appointed on committees of Synod?

A. That question has already been covered by what I have said, that to-morrow morning I will give all the information on that subject.

Q. Then just now you cannot answer that question?

A. I cannot from the books answer it at this moment.

Q. Are such members, who are merely asked to sit and deliberate, entered upon the rolls of Synod as forming part of the Synod?

A. No; but their names are entered as having been asked to sit and deliberate simply.

40 *Q.* Since June, eighteen hundred and seventy-five, the date of the union, what Church have you attended?

A. I hold a pew in St. Andrew's Church, Ottawa; I have attended that church and other churches.

Q. What other churches?

A. I have been in the habit of attending, at times, the sister Church of England, having been driven out of my own church, by the church being taken possession of by the Presbyterian Church in Canada.

RECORD.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

Q. What church do you attend as a regular thing from Sunday to Sunday ?
A. I am oftener in the sister Church of England than any other.
Q. Do you hold a pew in any other church but St. Andrew's Church,
Ottawa ?

A. No.

Q. Who is the minister of that church ?

A. Rev. Daniel Gordon.

Q. In connection with what Church is St. Andrew's Church, Ottawa ?

A. St. Andrew's Church, Ottawa, is in connection with the Presbyterian Church in Canada at this moment. I hold my pew, claiming that that church 10 belongs to the Presbyterian Church of Canada in connection with the Church of Scotland. But I took out my certificate as soon as the union took place, so that I could not be enrolled in the union roll as a member of the new Church.

Q. Do you worship there ?

A. At times.

Q. Does your family attend there ?

A. Occasionally.

Q. Generally ?

A. No.

Q. Do you contribute to the funds of that Church ?

20

A. Nothing but my pew-rent.

Q. Then you do not represent any congregation or Kirk-session in connection with what you call the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, that is to say, the Church that the Petitioner in this cause claims to represent ?

A. I have already, I think, stated so that I do not.

Q. You have already stated that you belong to the Presbyterian Church of Canada in connection with the Church of Scotland ; if you belong to no congregation under that name or no Kirk-session under that name, how do you come to belong to such a Church ?

30

A. That is one of the grievances we complain of, that our church has been taken away from us and that we have no congregation in Ottawa to which we can go. We would have to be compelled to go to a Church to which we did not belong.

Q. Is it not true that you appear in the Synod minutes, which are filed by the Rev. Gavin Lang, marked Z1, as being appointed on certain committees of said Synod ?

A. Yes.

Q. Do you pretend that, not being a member of said Synod and being only asked to sit and deliberate, you had any right, according to the laws of the Presbyterian Church of Canada in connection with the Church of Scotland, to be appointed on committees, such as a member of the committee on bills and overtures ?

40

A. I pretend that the Synod, being a committee of the Church, having the management of the business of the Church at a crisis when so many had left her communion, that irregularities are not only permitted, but provided for according to the Confession of Faith.

Q. Then you admit that your appointment as a member of such committee was an irregularity?

A. I do not admit it was an irregularity; what I contend is, even if irregularities were committed, those irregularities would not affect the rights of the members and adherents of the Presbyterian Church of Canada in connection with the Church of Scotland, and thereby cause them to forfeit their civil rights.

Q. Then, can you show any law of the Church to authorize your appointment as a member of a committee on bills and overtures when you were merely asked to sit and deliberate?

10 A. I am not aware that there is any law on the subject. In extraordinary circumstances it has been provided that church courts may depart from the ordinary rules when exigencies demand it.

Q. In what way may they depart from ordinary rules, according to their own free will?

A. No, according to the general laws of the Church.

Q. Show me those laws?

20 A. The form of church government, forming part of the Confession of Faith, provides, at page 105 of the form of church government, an Act of the General Assembly of the Church of Scotland, passed in sixteen hundred and forty-five, and which still remains in force, that even in so serious a matter as the ordaining of ministers, ordinary rules may be departed from in extraordinary circumstances, as appears from the form of church government bound up with the Confession of Faith, and which I now produce and file marked Z4.

Q. This form of Church government, you have spoken of, is the form of Church government adopted by the Assembly of the Church of Scotland, is it not?

A. Yes.

Q. Is that all you have to show as law on the subject?

A. That is all I have to produce.

30 Q. You have stated in your examination-in-chief that on the fifteenth of June, eighteen hundred and seventy-five, after Mr. Cushing had delivered a notarial protest to the moderator of the Synod then meeting in St. Paul's Church, Montreal, a number of members of Synod left the Church, and left behind them some members and some strangers; will you be kind enough to state how many ministers of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland then assembled remained behind in St. Paul's Church and did not go with the majority to consummate the union which is in question in this cause?

A. I could only state from memory, and I would not like to charge my memory with it at this date; and there is no record of those who remained.

40 Q. State it from memory?

A. I cannot tell exactly; I think there must have been seven ministers and either two or three elders; I would not be sure which.

Q. Will you give the names of the said ministers?

A. I cannot, really; but I could give some of them—those who signed this document contained at pages 35 and 36 of Synod minutes of eighteen hundred and seventy-five—namely Robert Dobie, Wm. Simpson, Robert Burnet,

RECORD.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
Jul. 1879.
—continued.

RECORD. David Watson, Wm. McMillan, Thomas McPherson, Roderick McCrimmon, John Davidson and John McDonald. These at least were present.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

Q. How many of these were ministers?

A. Seven.

Q. Which of these were elders?

A. Wm. McMillan and Roderick McCrimmon.

Q. Do you know of any others, members of Synod, who remained behind?

A. I do not, really.

Q. Now, to the best of your knowledge, is it not true that no other members of Synod remained behind on the fifteenth of June in St. Paul's Church except those whom you have just mentioned?

A. Well, to the best of my belief, it is, but I would not be positive.

Q. Do you not know, as a matter of fact, that the Rev. J. S. Mullan also remained behind and afterwards left?

A. The Rev. J. S. Mullan went away with the other seceders out of the Church. After the moderator had taken the chair the Rev. J. S. Mullan returned and made some objection as to the legality of a protest lodged the night before, on the ground that a certain number of quarter-dollars had not been left when the protest was entered. Having made this objection, which was one objection he did make, he then went off again.

Q. Do you know where he went to?

A. From his own statement he went to the Skating Rink; I personally have no knowledge of it.

Q. Then, to the best of your knowledge and belief, is it not true that there did not remain behind in the said St. Paul's Church, after the majority of the Synod had repaired to the Victoria Skating Rink, fifteen members of Synod?

A. To the best of my knowledge that number did not remain?

Q. What then did those who remained behind proceed to do?

A. Having been left by a large number of the members of Synod, those who remained behind proceeded in accordance with the laws of the Church to appoint a moderator to continue the business. In the critical state of the Church the moderator engaged in prayer for the Divine guidance. The moderator was the Rev. Robert Dobie, Petitioner in this cause, who had previously been a moderator of the Presbyterian Church of Canada in connection with the Church of Scotland. He having done so, the members of Synod then proceeded to continue the business which had been begun in the morning. They continued until they closed the business and adjourned.

Q. You say that the first proceeding was to appoint the Rev. Robert Dobie, moderator; is it not true that the first proposal was to appoint the Rev. David Watson, of Thorah, moderator.

A. There was no proposal. When the others had left there was a minute or two of confusion, and there was some talk of appointing the Rev. David Watson, but there was no motion of any kind except that to appoint the Rev. Robert Dobie, moderator.

Q. You are positive of that?

A. Positive of that.

Q. You are positive that Rev. Mr. Watson did not refuse the appointment of moderator? RECORD.

A. I am positive the Rev. David Watson, when he was spoken about, pointed out that the proper man was not himself; but there was no motion to appoint the Rev. David Watson.

Q. Did they appoint a clerk?

A. They appointed a clerk *pro tempore*, the Rev. Robert Burnet.

Q. Previous, is it not true that the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland had passed a resolution resolving to adjourn the said meeting of Synod to the Victoria Skating Rink, Montreal?

A. They had, and under two protests, one from individual members of Synod and one from the notary.

Q. Nevertheless, is it not true that the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland did immediately, previous to the appointment of the Rev. Robert Dobie, as you have heretofore stated, under authority of said resolution, adjourn the said Synod to the said Victoria Hall or Skating Rink?

A. A number of members of the Presbyterian Church of Canada in connection with the Church of Scotland left St. Paul's. Personally I do not know where they went. They went, I understand, with the intention of going to the Skating Rink.

Q. Were you not present during the whole day at the meeting of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland on the fifteenth of June, eighteen hundred and seventy-five, in St. Paul's Church?

A. I believe so.

Q. Did you not then and there hear a resolution moved, seconded and carried, to the effect that the said Synod should adjourn to the Victoria Hall or Skating Rink, Montreal?

(Objected to as being a matter of record, which will be shown by the records filed, if a fact. Objection reserved by the parties).

A. I have no remembrance of it, and it is not on the record.

Q. Is it not true that the resolution of the said Synod was moved, seconded and carried on the fourteenth of June, to wit, the previous day, to the effect, as found on page 35, of the said minutes of Synod filed in this cause as Petitioner's Exhibit "BBB," that the said Synod did resolve to repair on the adjournment of the court, to wit, the said Synod, on the next morning, namely, the fifteenth of June, to the said Victoria Hall, commonly known as the Victoria Skating Rink, for the purposes mentioned in said resolution?

A. I believe so, and thereupon a dissent was entered.

Q. Is it not true that it appears in the minutes of said Synod, to be found in the said Exhibit "BBB," on page 40 of the minutes of eighteen hundred and seventy-five, that "the Synod adjourn to meet in the Victoria Hall within this city, at ten minutes before eleven o'clock on the forenoon of this day, for the purpose of uniting with the other Churches named in the minute adopted at yesterday's diet, to form the Presbyterian Church in Canada."

In the
Superior
Court.

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
continued.

A. It is true that a narrative is given here by the clerk of what took place, according to their view, but the Synod did not adjourn; a number of members of the Synod adjourned.

Q. Nevertheless, can you deny that the said resolution of Synod to adjourn was passed and carried by a large majority?

A. I can only state what I have said before—it was carried under protest, and also in the face of a second or notarial protest, which is not recorded in the minutes of Synod. That is the notarial protest I have already spoken of, served by Mr. Cushing.

Q. Can you deny that it was with a view of following up the said resolution to adjourn to the Skating Rink that the majority of members of said Synod went to the Victoria Skating Rink on the fifteenth of June, eighteen hundred and seventy-five?

(Objected to, this being a question upon which the witness under examination cannot supply the best testimony, the object of those so leaving the St. Paul's Church being capable of being best proved by themselves. Objection reserved by parties.)

A. Personally, I do not know. I decline to say anything about it.

Q. You simply attended the meeting of Synod at that time as a spectator?

A. As a member of the Presbyterian Church of Canada in connection with the Church of Scotland, and one deeply interested in its preservation.

Q. You were not a member of Synod, I suppose?

A. I was not.

Q. What congregation did you belong to then, on the fifteenth of June, eighteen hundred and seventy-five?

A. Of St. Andrew's Church, Ottawa, the congregation I have already spoken of.

Q. After Mr. Dobie was appointed by those who remained behind in St. Paul's Church, to the chair, did those present transact any business at all except to adjourn?

A. The minutes contain what was done; I know there was business done, but I must look at the minutes to see what it was. The minutes, Petitioner's Exhibit Z1, show what was subsequently done.

Q. You mean the minutes marked Z1, filed by the Rev. Gavin Lang in this cause?

A. Yes.

Q. Is it not a fact that those minutes purport to give the minutes of the Acts and Proceedings of the Presbyterian Church of Canada in connection with the Church of Scotland during the whole of the fifteenth day of June, eighteen hundred and seventy-five, even before the time when the majority of the members of Synod adjourned to the said Victoria Hall, and during the time when the Rev. J. H. Mackerras was clerk of the said Synod?

A. All the papers, records and everything that was in the possession of the clerk and of the majority who seceded, were carried away, so that the first part of the proceedings had simply to be a narrative of what took place. The minutes themselves only purport as a matter of record to give the general scope of the business done previous to the secession and what was done afterwards.

Q. Who was the clerk of the said Synod which met on the fifteenth of June, eighteen hundred and seventy-five, in the morning?

A. The Reverend John Mackerras.

Q. Then had the Reverend Robert Burnet any authority to record the minutes of the said Synod, and sign his name as clerk of the proceedings of said Synod on June fifteenth, eighteen hundred and seventy-five?

A. He was authorized by the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, which continued the session, to enter on the record the events which preceded that secession.

10 Q. You mean that he was authorized by the ten men who remained behind to give a narrative of the proceedings of the said Synod?

A. I mean that he was authorized by the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland to do so.

Q. You mean after the majority had left to go to the Victoria Hall?

A. Yes.

Q. Then, as a matter of fact, there were only nine men who authorized him so to do?

A. I refer to my previous answer.

20 Q. Is it within the power of a church court, to wit, a Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, to adjourn from one place where it is holding its session to another?

A. I am not aware that it is.

Q. Are you aware that it is not?

A. I am not. I may mention, however, as a matter of fact, that the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, did adjourn in June, eighteen hundred and seventy-four to meet in Toronto in November of the same year.

30 Q. You have stated in your examination-in-chief that there are at present ten ministers, three missionaries, and three retired ministers connected with the Church which you say you belong to and which Mr. Dobie the Petitioner claims he belongs to, and which you call the Presbyterian Church of Canada in connection with the Church of Scotland, will you be kind enough to give me the names of the said ministers and missionaries?

A. Rev. John Davidson, Rev. John McDonald, Rev. David Watson, Rev. Robert Dobie, Rev. Peter Watson, Rev. Neil Brodie, Rev. John Moffatt, Rev. Gavin Lang, Rev. A. J. Campbell, Rev. Robert Burnet, Rev. William Simpson, Rev. Thomas McPherson, and Rev. Hugh Nevin. The three last ones are retired ministers.

40 The missionaries are: Rev. Mr. Hutchinson, Rev. H. D. Steele, Rev. A. Shand and Rev. Mr. Fuller.

Q. The Rev. Mr. Moffatt, whom you have mentioned, was he one of the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, in June, eighteen hundred and seventy-five, at the time of the said union?

A. I really could not tell you.

Q. Was the Rev. A. J. Campbell a minister of the Presbyterian Church of Canada in connection with the Church of Scotland, on the fifteenth of June, eighteen hundred and seventy-five?

RECORD.

In the
Superior
Court.

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

A. No, I think not.

Q. He has been brought in since, then?

A. He was admitted by ordination since.

Q. The Mr. Shand whom you have mentioned as a missionary, was a missionary of the Presbyterian Church of Canada in connection with the Church of Scotland, on the fifteenth of June, eighteen hundred and seventy-five?

A. I believe not.

Q. Mr. Hutchison and Mr. Fuller, were they missionaries of the Presbyterian Church of Canada in connection with the Church of Scotland, on the fifteenth of June, eighteen hundred and seventy-five?

A. I think Mr. Hutchison was, but I am not sure. Mr. Fuller was not.

Q. So that, as a matter of fact, there are only at present adhering to the said Rev. Robert Dobie and those whom he represents, seven ministers and three retired ministers who were ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, on the fifteenth day of June, eighteen hundred and seventy-five, the date of said union?

A. Apparently so.

Q. And one missionary that you are sure of, who belonged to the Presbyterian Church of Canada in connection with the Church of Scotland, at that date?

A. Yes.

Q. You have stated in your examination-in-chief that, to the best of your belief, there are at present about between thirty-six and forty congregations in connection with the Petitioner, Rev. Robert Dobie, and what he claims to be the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland; will you be kind enough to mention where these congregations are to be found?

A. I cannot mention them all; I will give you some of them. At Collingwood a new church has been put up for our adherents there that cost six thousand dollars. At Thorah they have put up a church within the last year that cost thirteen thousand dollars. At Perth we have a missionary with three charges; one of the congregations worships in the Town Hall, the church having been taken away; the others worship in churches; there are three stations there, served by the missionary at Perth. I should have mentioned that at Collingwood there are six stations served by the minister there. In Lancaster we have a church and a missionary. There is St. Andrew's Church, Montreal, here; the congregation of Bayfield; then, there is North Williamsburg, Williamstown, London, the congregation at Galt, and there are others which I do not remember at this moment.

Q. You have mentioned nine congregations. How do you account for the fact that you have stated there were about thirty-six or forty, and you being able to give only the names of nine?

A. I cannot remember the names; I am not the agent of the Church. There is Côte St. George, for instance, that has just occurred to me.

Q. Is it not a fact that according to Presbyterian procedure and polity, congregations with their representatives or their Presbytery rolls are always reported to the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. The Presbytery roll is made up, but there is a large number of congregations which have no ministers, and there has been a great deal of difficulty in making them up, because there is hardly a church connected with our Church that has not been attacked by a law-suit for the very purpose of depriving the said Synod of what these gentlemen are pleased to call a quorum.

Q. Then, if you have thirty-six or forty congregations, should they not appear in the minutes which the said Rev. Gavin Lang has filed in this cause?

A. No.

Q. Why not?

A. Because the roll that is given is a mere matter of convenience in the work. You might just as well ask us to put in lists of committees?

Q. Did not all the congregations of the Presbyterian Church of Canada in connection with the Church of Scotland, always appear in the minutes of the Synod previous to the fifteenth of June, eighteen hundred and seventy-five, and from eighteen hundred and thirty-four?

A. No; in eighteen hundred and thirty-five there was a roll appeared which was made up from other papers, as is stated explicitly in the minute; from and during eighteen hundred and thirty-one to eighteen hundred and thirty-four there were no rolls, although the rolls were filled in, and the reasons were given as a mere matter of convenience; in eighteen hundred and thirty-three the statement appears: "No roll of Synod appears to have been preserved hitherto, either in record or in print." There were no rolls in the written records. I never heard the rolls of Presbyteries submitted to the Synod. I heard the names called over in order that those present might answer that they were present. I have never seen the written records kept by the clerk up to eighteen hundred and seventy-five, so that upon that point I cannot speak.

Q. What were the said names called over from?

A. From what was said to be the Synod roll made up from Presbytery rolls.

Q. Then Presbytery rolls were supplied to the Synod?

A. I do not know that; I said exactly what I do know; I cannot say any more.

Q. Did you never hear the clerk of the Synod read out in regular order the roll of the Presbytery of Montreal, and then that of the next Presbytery, *et cetera*?

A. I said distinctly the roll was called over for the members present to answer to their names.

Q. And those names were the representatives of congregations, were they not?

A. I presume so; they must have been.

Q. Is it not a fact then, that the said minutes filed by the Rev. Gavin Lang ought to show the said rolls of Presbyteries, and, secondly, the different congregations you have spoken of?

A. I do not think it. Not having acted as either Synod or Presbytery clerk, or in any other capacity of that kind, I cannot say any more than I have said.

The examination of this witness is adjourned.

RECORD.

In the
Superior
Court.

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
continued.

And on this fourth day of July, of the year aforesaid, reappeared the said witness, Douglas Brymner, who continued his evidence as follows:

Q. Can you give me now the twenty instances which you referred to in the previous part of your examination; and which you stated you would look up and give this morning?

A. The expression twenty meant simply that I could give instances, that is, an indefinite number. I find on examining the minutes "BBB," filed in this cause, from the year eighteen hundred and fifty-six down to eighteen hundred and seventy-five, that one hundred and fifty-eight ministers and elders from the said Church and from other churches were asked to sit and deliberate with the 10 Synod. I find that in eighteen hundred and fifty-six the Rev. Wm. Snodgrass, then a minister in Prince Edward Island, being present, was appointed on the twenty-ninth of May to preach by the Synod, as will be seen at page 18 of the Synod minutes for that year. On the following day, the thirtieth of May, as will be seen on the same page, Mr. Snodgrass attended the said Synod as a delegate from the Synod of Nova Scotia, was introduced to the Synod and received a cordial welcome. At page 24 of the said Exhibit "BBB," of the same year, eighteen hundred and fifty-six, I find that the Rev. Wm. Snodgrass seconded a motion regarding the commutation funds. I find at page 29 of the said minutes of the same year, that Mr. Snodgrass moved a resolution regarding Queen's Col- 20 lege. I find in eighteen hundred and fifty-seven of said Synod minutes "BBB," page 11, of that year, that Rev. Wm. Donald, a minister of the Synod of New Brunswick, seconded a motion, as appears at page 20 of the same minutes; seconded another motion, as appears at page 25 of the said minutes; and seconded a third motion, as appears at page 27 of the said minutes. I find in Synod minutes "BBB," for eighteen hundred and seventy-three, and at page 26 thereof, that Rev. G. M. Grant, of St. Mathew's Church, Halifax, was invited to sit and deliberate. At page 48 of said Synod minutes, I find that the Synod expressed their indebtedness to the Rev. George M. Grant, Halifax, "for the 30 "valuable services which, by his wise counsels and stirring eloquence, he has "rendered at the important deliberations of the present meeting." I find, at page 49 of the said minutes, that Rev. G. M. Grant moved, seconded by Mr. MacDonell, a vote of thanks to certain parties. I have now before me a memorandum containing dates and pages taken from the Synod minutes "BBB," from the year eighteen hundred and fifty-six down to the year eighteen hundred and seventy-five, showing that ministers and elders of various churches were asked to sit and deliberate, which dates and pages I am ready to give if required.

Q. Is it not true that the Rev. Dr. Snodgrass, whom you have referred to, was a corresponding member of the said Synod, and that as such his name appeared on its roll as a member thereof? 40

(Objected to as irrelevant and as filling up the record with matters not pertinent to the issue. Objection reserved by parties).

A. The Rev. Wm. Snodgrass was appointed a delegate from the Synod of Nova Scotia, but his name did not appear on the roll of Synod.

Q. What I asked you was, whether he was not a corresponding member of the Synod, and you have not answered that question?

A. The exact words of the minute on page 18 of Synod minutes "BBB,"

are these : " There was produced and read an extract minute of the Synod of
 " Nova Scotia of date July seventh, eighteen hundred and fifty-five, appointing
 " the Rev. Wm. Snodgrass, minister of Charlottetown, Prince Edward Island,
 " delegate from that Synod to attend this meeting of Synod."

Q. Was the Rev. Wm. Donald, of whom you have spoken, a corresponding member of the said Synod ?

A. I believe so. The minute says his name was added to the roll as a corresponding member.

Q. What about the Rev. George M. Grant ?

10 A. The Rev. George M. Grant being present, was asked to sit and deliberate.

Q. Can you show any law with reference to the rights of persons who are asked to sit and deliberate in the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland ?

A. I have examined the Synod minutes " BBB," filed in this cause, carefully. I can find no law on the subject, either one way or another.

Q. Is it not a fact that the form of asking strangers who are present to sit and deliberate has always been understood to be merely a matter of courtesy, and to give such person no right to become a member of the Synod or to vote in
 20 the said Synod ?

A. I can state, as a matter of fact, that many of those who were asked to sit and deliberate took part in the proceedings by speaking on the questions under discussion. As to being members of Synod, it certainly did not involve that.

Q. Do the minutes filed by the Rev. Gavin Lang show the number of congregations you have referred to ?

A. No, I believe not. The Synod of the Presbyterian Church of Canada in connection with the Church of Scotland claims ecclesiastical jurisdiction over all the congregations which were in existence and in connection with the said Synod on the fifteenth of June, eighteen hundred and seventy-five, whether they
 30 went into the union or not.

Q. You cannot give the names then of any other congregations except those you have just mentioned ?

A. These are some of them. I do not remember all the names ; as I said yesterday, I am not the Church agent. But there are a number of others. Each missionary and each minister has on an average charge of about three congregations.

Q. The congregations you have mentioned, I suppose, did not go into the union in eighteen hundred and seventy-five, since you claim them as belonging to Mr. Dobie and his friends ?

40 A. There are congregations which have been deprived of their churches on the grounds of the Acts of Ontario and Quebec, called the Union Acts. Some of them are worshipping in school houses and in other buildings, having been obliged to yield to *force majeure*.

Q. The congregations you have mentioned, I suppose, did not go into the union in eighteen hundred and seventy-five, since you claim them as belonging to Mr. Dobie and his friends ?

A. The particular congregations I have mentioned are composed of mem-

RECORD.

In the
 Superior
 Court.

No. 47.

Deposition
 of Douglas
 Brymner,
 produced by
 Petitioner,
 filed 2d
 July 1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2d
July 1879.

—continued.

bers and adherents of the Presbyterian Church of Canada in connection with the Church of Scotland, whether the particular church building in which they worshipped at that time was taken possession of by those who seceded or not.

Q. I did not ask you about the church buildings; I asked you in effect whether the congregations you have mentioned did or did not go into the union in question in this cause?

A. I can give no further answer than the one I have already given. I can state distinctly that those people did not go into the union.

Q. I have asked you about congregations, not about individual people?

A. Those congregations did not go into the union.

Q. Do you mean by that, that the said congregations by vote decided to remain out of the union?

A. They did remain out of the union.

Q. Do you mean to say that the whole of said congregations remained out of the union having decided by a vote of the congregation?

A. I have no personal knowledge.

Q. Seeing then that you have no personal knowledge, how can you undertake to swear that the said congregations did remain out of the union?

A. I have letters from, I suppose, nearly all the congregations, if not all, and very many individuals who have never been able to form themselves into 20 congregations for want of ministers.

Q. Then your only knowledge is derived from certain letters you have in your possession?

A. Letters and other information which has come into my possession.

Q. You have mentioned Perth, London, Williamstown and Galt as congregations that now belong to the Synod which you call the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland; are these the same congregations that appeared on the roll of Synod of the Presbyterian Church of Canada in connection with the Church of Scotland on the fifteenth of June, eighteen hundred and seventy-five?

A. They are the same under a different minister.

Q. Are you not aware that it is only a mere section of some of these congregations that you have just referred to who have not gone into the said union of Churches?

A. In the case of London there was a majority of the congregation refused to enter the union at a vote which was taken, and who determined to remain in connection with the Presbyterian Church of Canada in connection with the Church of Scotland, and have continued since. In the congregation of Perth there was a majority claimed by both sides, those who resolved to secede from the Presbyterian Church of Canada in connection with the Church of Scotland, and those 40 who determined to maintain their connection with the Presbyterian Church of Canada in connection with the Church of Scotland?

Q. Have you any personal knowledge on which side the majority was?

A. I have not.

Q. Now, with regard to Williamstown?

A. I am not perfectly acquainted with the facts connected with Williamstown. In Galt, we have a mission; missionary services have been conducted there. I do not believe there was a vote taken there at all.

Q. So you do not know whether the congregation at Galt went into the union or not? RECORD.

A. I mean to say that we have a mission there composed of members of the Galt congregation, still holding connection with the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. Nevertheless, you stated a minute ago that the congregation at Galt, which you claimed was the same congregation as was on the roll of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland on the fifteenth of June, eighteen hundred and seventy-five; now you state you do not know whether that congregation went into the union or not by vote; how do you reconcile your two statements?

A. The two statements are perfectly consistent with each other.

Q. Before the fifteenth of June, eighteen hundred and seventy-five, was there any congregation at Collingwood on the roll of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. The congregation at Collingwood was known as the congregation of Eldon. As a matter of convenience, when the new Church was to be built, they built it in the town of Collingwood, still retaining the Church in Eldon.

Q. How far away is Eldon from Collingwood?

A. I could not tell you.

Q. Is it over a hundred miles?

A. No, I think not; from what I am told by the elders there, it is quite close.

Q. So that there was no Church at Collingwood on the fifteenth of June, eighteen hundred and seventy-five, in connection with the said Church?

A. There was no church building.

Q. And no congregation on the roll of Synod?

A. Not under that name.

Q. Do you mean to say that the congregation at Eldon is the same congregation as the congregation at Collingwood?

A. I am very sure that the place is Eldon; at all events, the congregation is in the same township that Collingwood is in, whether that is Eldon or not.

Q. Then you do not know whether the congregation you have spoken of at Eldon is the same congregation as the congregation you have spoken of at Collingwood?

A. I have told you to the best of my recollection.

Q. You do not know; I suppose?

A. I believe so; I may be mistaken as to the name, but at all events the congregation of the same township in which Collingwood is situated was the congregation which built the church at Collingwood.

Q. Do you claim to have a congregation at Toronto?

A. No; if we could get a minister we would have one.

Q. I suppose you have no personal knowledge as to the congregations you have spoken of, as to whether they have Kirk-sessions, for instance, in every case?

A. Well, there seem to be regular returns made to the Synod of representative elders from many of them.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
continued.

Q. If then, regular returns are made to Synod from many of them, can you not show me from the minutes of Synod how many returns from such congregations are entered on the roll of said minutes?

A. I cannot.

Q. Why not, if they are entered?

A. Because the minutes will show.

Q. Did you not say a little while ago that the said minutes would not show the congregations which you claim as belonging to what you call the Synod of the Presbyterian Church of Scotland?

A. My last answer was: the Synod minutes will show all I can say on the subject?

Q. I see on the said minutes, produced by the Rev. Gavin Lang as Petitioner's Exhibit Z1, at page 39, that the name of Mr. T. A. McLean is entered on the sederunt as being a member of Synod; do you know the said Mr. McLean?

A. I do.

Q. Can you tell me what Kirk-session or congregation he represented?

A. I cannot.

Q. You know he lives in Toronto?

A. Yes.

Q. Previous to and on fifteenth of June, eighteen hundred and seventy-five, in what Provinces were the congregations of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. In the Provinces of Quebec and Ontario.

Q. Now you have stated in your examination-in-chief, with the view of showing what a large body you and the said Mr. Dobie represent, I suppose, that you have adherents throughout the whole Dominion?

A. If I used Dominion, it is the Provinces I meant; I meant the Provinces of Quebec and Ontario.

Q. You have stated in your examination-in-chief that the formation of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland took place at the instance of Sir George Murray; did Sir George Murray advise that the Synod should be composed of only ministers and adherents of the Church of Scotland, in Scotland, or did he wish that all Presbyterians should be embraced in it?

A. He wished that all Presbyterians should be embraced in it. In the Synod minutes for eighteen hundred and thirty-one, 33, at page 13, will be found the letter referred to, quoted on page 14 of the resolution of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. When were payments first made to ministers of the Presbyterian Church of Canada in connection with the Church of Scotland from the proceeds of the Clergy Reserves?

A. Up to eighteen hundred and thirty-one there was no Synod of the Presbyterian Church of Canada in connection with the Church of Scotland. Ministers of the Church, I think, received it first in eighteen hundred and twenty-five, and they became entitled to it, upon their congregations building a suitable place of worship and declaring that they acknowledged the jurisdiction of the Church of Scotland, and upon that ground the ministers received the allowance.

Q. When did ministers of the Presbyterian Church of Canada in connection with the Church of Scotland first receive from the proceeds of the Clergy Reserves?

A. From eighteen hundred and twenty-five ministers did. The Synod itself was constituted in eighteen hundred and thirty-one.

Q. You have said in your examination-in-chief that it was because ministers of the Presbyterian Church of Canada in connection with the Church of Scotland were in connection with the Church of Scotland that in eighteen hundred and fifty-five they had claims upon the proceeds of the Clergy Reserves, and that it was the commutation of those claims that originated the 'Temporalities' Fund in question in this case. Did all the ministers on the Synod roll at the date of the passing of the Act, the eighteenth of December, eighteen hundred and fifty-four, obtain recognition by the Government as having a right to share in these funds? if not, why?

A. The Imperial Act of eighteen hundred and fifty-three defined those who had a claim to be continued in the enjoyment of the allowances from the Government from what was known as the Clergy Reserves. That was passed on the ninth of May, eighteen hundred and fifty-three. Any minister of the Church of Scotland in Canada, according to the Statute of eighteen hundred and forty, who was receiving an allowance under that Statute, became entitled to its continuance for life. By the Imperial Act of eighteen hundred and fifty-three and the Provincial Act of eighteen hundred and fifty-five, provision was made for commutation. All those on the ninth of May, eighteen hundred and fifty-three, who were receiving this allowance, were entitled to commute. Between the ninth of May, eighteen hundred and fifty-three, and the meeting of Synod in January, eighteen hundred and fifty-five, eleven ministers had been placed on the Synod roll, who, by virtue of the Imperial Act of eighteen hundred and fifty-three, were declared not entitled to commute, and consequently did not commute.

Q. Then these eleven were not recognized by the Government as having right to a share of this fund?

A. I presume not. The date was specific—the ninth of May, eighteen hundred and fifty-three. They must have been on the list of those receiving allowances.

Q. What is the nature of the connection between the Presbyterian Church of Canada in connection with the Church of Scotland and the Church of Scotland, in Scotland, and what was it up to the fifteenth of June, eighteen hundred and seventy-five?

A. The nature of the connection is set out repeatedly in the Synod minutes, of which I will furnish a list now if you choose. I specially refer to the Synod's resolutions of eighteen hundred and fifty-one, to be found at pages 24 and 26 of Synod minutes for that year, and which are filed in this cause.

Q. Is not the nature of the said union and the meaning of the words in her name, namely, "in connection with the Church of Scotland," defined by act of her Synod passed in the year eighteen hundred and forty-four, to be found in said Synod minutes for that year at page 15; has the said Act ever been repealed?

A. The act was in force on the fifteenth of June, eighteen hundred and seventy-five.

RECORD.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued

RECORD.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

Q. Has it ever been repealed?

A. It has been repealed since that date.

Q. By whom?

A. By the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. Where is the repealing Act to be found?

A. In the minutes filed by the said Rev. Gavin Lang, marked Z1.

Q. Were you present when it was repealed?

A. I do not think I was.

Q. I suppose you are aware why they went through the formality of 10
repealing it?

A. It was repealed because it was a misleading document, and had been made use of to damage the Church.

Q. Then, is it not true that the Church of Scotland in Scotland, claims no jurisdiction over the said Presbyterian Church of Canada in connection with the Church of Scotland, and that the said last mentioned Church is a free and independent Church?

A. The Church of Scotland claims no authoritative jurisdiction. The constitutional position is to be found at page 33 of Synod minutes, Exhibit 33, for the year eighteen hundred and forty-two, by which the Church of Scotland 20 declares that she has transferred the direct superintendence of the natives of Scotland, members of her Church, to the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, declaring at the same time that she will exercise no authoritative jurisdiction, it being a close and intimate, though voluntary, connection. This is the last constitutional declaration we have. It was upon the ground of this that the Rev. Dr. Cook and a deputation went to Scotland in eighteen hundred and seventy-five, to obtain the approval of the General Assembly for uniting with other ecclesiastical bodies. The report of the deputation to the General Assembly of the Church of Scotland is to be found at page 99 of the Appendix, for the year eighteen hundred and seventy- 30 five, of the said Synod minutes "BBB."

Q. If the said Church of Scotland has never claimed any authoritative jurisdiction over the said Synod, has she claimed any jurisdiction at all, and if so state what?

A. Yes, repeatedly, and exercised it. In eighteen hundred and thirty-four, as appears at page 66 of Synod minutes "BBB," of that date, is a refusal on the part of the Colonial Committee of the General Assembly of the Church of Scotland to allow its branch here to receive a preacher from the Congregational Church, which refusal was acknowledged as binding by the Synod of the said branch.

Q. That was previous to the passing of the Declaratory Act of Independence 40
of eighteen hundred and forty-four?

A. In eighteen hundred and thirty-five, as appears from an affidavit by the Rev. John Cook, of Quebec, filed in this cause, he deposes that he was ordained and inducted by the Presbytery of Dumbarton, one of the Courts of the Church of Scotland, to a church in Quebec, and that upon such ordination and induction he entered upon the ministry of that congregation, and was received as a member of

the Presbytery of Quebec, as one of the Courts of the Presbyterian Church of Canada in connection with the Church of Scotland, and by the Synod thereof. After this declaration of eighteen hundred and forty-four, the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland presented its claims, as being in connection with the Church of Scotland in Scotland, to the benefits of the Clergy Reserves, and received such benefit on that ground. I can give many more instances, but it is not necessary to multiply them.

Q. Then you claim that the Presbyterian Church of Canada in connection with the Church of Scotland is a branch of the Church of Scotland for the reasons you have just stated?

A. In January, eighteen hundred and fifty-five, when the commutation was authorized of the claims of the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland to a share in the Clergy Reserves, and in eighteen hundred and fifty-eight when the Act incorporating the Temporalities' Board was passed, the allowances from the Clergy Reserves were claimed and received by ministers of said Church upon the ground of their representing the Church of Scotland in Canada.

Q. Now, will you tell me what you claim?

A. I maintain that that connection, be it close or not, exists down to the present day with those who have remained members and adherents of the Presbyterian Church of Canada in connection with the Church of Scotland?

Q. What I have asked you is whether you claim the Presbyterian Church of Canada in connection with the Church of Scotland was a branch of the Church of Scotland? Answer, yes or no.

A. I claim the connection to be what it is set out by the authoritative decisions of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland from the year eighteen hundred and thirty-one downwards.

Q. Then do you refuse to give me a direct answer to my question whether you claim the said Church to be a branch of the Church of Scotland, yes or no?

A. I do make such claim.

Q. But you do not pretend, do you, as Sir Hugh Allan did, that the said Church is the Church of Scotland in Canada, instead of being merely a branch?

A. I simply refer for that question to the legal status defined by the Imperial Act of eighteen hundred and forty with respect to the Clergy Reserves.

Q. Is it not the case that a great many ministers of the Presbyterian Church of Canada in connection with the Church of Scotland previous to and on the fifteenth of June, eighteen hundred and seventy-five, were ministers who were not ministers of the Church of Scotland, but who were educated, ordained and inducted in Canada?

A. Yes.

Q. Is it not true that such ministers, on going home to Scotland, were not recognized by the Church of Scotland as having the status of a minister of the Church of Scotland?

A. It is true as a matter of theory; as a matter of fact, any minister licensed by the Presbyteries or Synod of the Presbyterian Church of Canada in

RECORD.

In the
Superior
Court.

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

RECORD. connection with the Church of Scotland was received as a minister of the Church of Scotland, and declared to be so on application without further examination.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymaer,
produced by
Petitioner,
filed 2nd
July 1879.
continued.

Q. Is it not true that some of such ministers, who were ordained by the Church here, on going home to Scotland and applying for induction to parishes there, were referred to the committee for the reception of dissenting ministers?

A. I do not know personally about such cases. If there were any it must have been in the interval between one General Assembly and another.

Q. Then, what I understand you to say is, that a minister belonging to the Presbyterian Church of Canada in connection with the Church of Scotland, who was educated, licensed, ordained and inducted here, on going home to Scotland, occupied exactly the same position in the Church of Scotland as a minister of the said last mentioned Church?

A. He did so, on applying and being received. The law of patronage prevented the full extent of the connection being carried out. But that was a local law which prevented that.

Q. Were not such ministers, on going home to Scotland under the above circumstances, treated in the same way, and did they not occupy the same position as a minister coming from any other body of Christians?

A. No, decidedly not.

Q. Were they eligible for a call?

A. They were eligible for a call. They made application, and were received on that application, because they were ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and the connection is set out at section 4, of page 24, of the Synod minutes "BBB," eighteen hundred and fifty-one, that ever since the formation of this Synod our ecclesiastical relationship has been acknowledged by the Parent Church in every way conformable to her constitution.

Q. Then they were not eligible for a call, as I understand you, until they were admitted by the Church of Scotland?

A. According to the constitution of the Church of Scotland, which provided for lay patronage, no ministers licensed by any branch in the Colonies could become fully recognized by the Church of Scotland; but I repeat, as a matter of fact, all the step that was necessary was an application by such ministers, and they were received without examination by the General Assembly of the Church of Scotland as ministers of that Church.

Q. Were they received on any terms different from the terms on which dissenting ministers were received?

A. They were received by the same committee which has been in existence for many long years, and they were received on different terms from dissenting ministers.

Q. What different formalities had they to go through?

A. In the case of dissenting ministers there were various forms of examinations, *et cetera*; in the case of ministers of this Church, the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, there were no examinations.

Q. Are you positive?

A. I am positive that is the general rule, there may have been exceptional cases.

Q. I suppose you were there and know all about it?

A. I was not there, but I know from the Acts and Proceedings of the Church of Scotland what their practice is.

Q. Where are those reports of the Church proceedings?

A. I have some at home, in Ottawa; I have none here with me; I did not bring the whole library.

Q. Look at the minutes produced by the said Rev. Gavin Lang, marked Z1, and state why, in the minutes of the meeting stated to be held in St. Andrew's Church, Montreal, on the thirtieth of November, eighteen hundred and seventy-five, it is not mentioned that any rolls were given in, as it is in all of the succeeding sessions?

A. I do not know that I was present at the said meeting.

Q. Who composed the sederunt? Were they the same men who were present at the first meeting stated to be held on the fifteenth of June, eighteen hundred and seventy-five?

A. I presume so.

Q. Do you know what Kirk-session Mr. George Brockie represented?

A. Paisley, I believe.

Q. And Mr. Roderick McLeod?

A. I do not know.

Q. Were the said two last-mentioned persons on the roll of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, on the fifteenth of June, eighteen hundred and seventy-five?

A. I could tell only by referring to the minutes. I have looked, and do not see their names on the said roll.

Q. Will you look at the Basis of Union, to which you have already referred in your examination-in-chief? You have stated, that according to the said basis of union it is optional as to what extent persons shall adhere to the Confession of Faith in the Presbyterian Church in Canada; will you kindly point out the particular part of the said basis which justifies you in making such a statement?

A. The statement I made was as to whether it was optional to sign for the whole Confession of Faith or not, and I abide by that statement. It was optional on the part of ministers joining the Presbyterian Church in Canada to receive the whole Confession of Faith, or a portion of it, as set out in the basis of union.

Q. Will you point out the particular part of the basis of union which justifies you in making the statement that it is optional with persons belonging to the Presbyterian Church in Canada, as to whether they shall adhere to the Confession of Faith in its entirety or not?

A. The words will be found at page 5 of Exhibit "EE," and are these: "It being distinctly understood that nothing contained in the aforesaid Confession of Faith or Catechisms regarding the power and duty of the civil magistrate shall be held to sanction any principles or views inconsistent with full liberty of conscience in matters of religion;" meaning thereby to indicate the different views which existed between the Church of Scotland and the Presbyterian Church of Canada in connection with the Church of Scotland on the one side, and the Canada Presbyterian Church and other bodies, which the said Synod was asked to join, on the other.

RECORD.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

RECORD.

—
In the
Superior
Court.
—

No. 47.

Deposition
of Douglas
Brymer,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

Q. That is your interpretation of the meaning of the words which you quoted?

A. Yes.

Q. What are the particular views that you refer to about the power and duty of the civil magistrate and the differences between the said two Churches on that point?

A. The Canada Presbyterian Church held the same views with what is called the Free Church in Scotland, maintaining that Churches have a supreme power not only over spiritual, but over ecclesiastical matters even, when these latter involve civil interests, which claim is known as that of spiritual independence. The Church of Scotland and the Presbyterian Church of Canada in connection with the Church of Scotland hold that in civil matters, even where ecclesiastical questions are concerned, the State is supreme. This is known by the name of Erastianism. The Presbyterian Church of Canada, to wit, the predecessor of the Canada Presbyterian Church, when it was formed into a Synod in eighteen hundred and forty-four, adopted as part of its questions put to a minister on his ordination the question. "Do you disown all Popish, Arian, Socinian, Armenian, Erastian and other doctrines?" *et cetera*, the word Erastian referring to the doctrines regarding Church government held by the Church of Scotland and by the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. Is the Church of Scotland Erastian?

A. The Church of Scotland has been charged with being Erastian, and is so designated in the protest lodged by the seceders from her communion, who seceded in eighteen hundred and forty-three, and their adherents in Canada who seceded from the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland in eighteen hundred and forty-four.

Q. Does the Confession of Faith or Catechisms, which you have referred to regarding the power and duty of the civil magistrate, contain or sanction any principles or views inconsistent with full liberty of conscience in matters of religion?

A. It does not.

Q. Then why do you object to the words in the second article of the said basis of union as follows: "It being distinctly understood that nothing contained in the aforesaid Confession or Catechisms regarding the power and duty of the civil magistrate shall be held to sanction any principles or views inconsistent with full liberty of conscience in matters of religion?"

A. Because the Canada Presbyterian Church maintained that the twenty-third chapter of the Confession of Faith contained doctrines inconsistent with liberty of conscience, and had expurgated or largely modified the twenty-third chapter of the said Confession of Faith. And besides, such liberty of obligation constitutes a departure from the obligation to receive the whole Confession of Faith, which is taken by the ministers and elders of the Presbyterian Church of Canada in connection with the Church of Scotland and of the Church of Scotland.

Q. But if, as a matter of fact, there is nothing in said Confession or Catechisms regarding the power and duty of the civil magistrate which can be held to

sanction any principles or views inconsistent with full liberty of conscience in matters of religion, as you have already stated, what possible objection can you have to its being so stated in the basis of union? and how can you make out that words, with which you are in the fullest accord, according to your own statement, can be twisted or construed into not receiving the Confession of Faith in its entirety, especially as it is expressly stated in the same article that the said Confession of Faith "shall form the subordinate standard of this Church?"

A. Because the expression is a mere pretext for getting rid of the whole obligation taken by ministers and office-bearers of the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. That is to say, such is your opinion?

A. I am giving a statement of my own views all through; I am not a Pope.

Q. Do you pretend that the Church of Scotland in Scotland had any right to interfere with the Presbyterian Church of Canada in connection with the Church of Scotland with reference to the union which took place in 1875?

A. I pretend that the Church of Scotland claimed no authoritative jurisdiction, and declined to express any approval of the conduct of those who sought an incorporating union with other Presbyterian bodies.

Q. Is it not to your knowledge that the said Church of Scotland, in Scotland, acting through her General Assembly, has expressly stated that after consideration of the terms of the proposed union as laid before them, to wit, the said basis of union, that there was nothing in the said terms of union to prevent the said Assembly from cordially wishing God-speed in their future labours for the Lord, to brethren who proposed to accept union on that basis, or co-operating with them in any way that might be found possible in the new state of things in promoting the religious interests of Scottish Presbyterians in the Canadian Dominion?

A. I do; the Church of Scotland has always wished God-speed to all organizations for the work of the Lord, but that God-speed does not in any way give approval of the union.

Q. Is it not true that the said General Assembly of the Church of Scotland also stated that while receiving with profound concern and regret the intimation that on the subject of an incorporating union of Presbyterian Churches, meaning the union in question in this cause, threatened division in the Canadian Synod is endangering the cordiality of that co-operation which is so essential to the success of the work of the Church in all lands, the General Assembly claim no title to review the proceedings which have issued in that result?

The examination of the witness was here adjourned.

And on this fifth day of July, of the year aforesaid, re-appeared the said witness, Douglas Brymner, and continued his evidence as follows:—

(Petitioner objects to the last question put to witness yesterday, as irrelevant, as not arising out of the examination-in-chief, as not being the best evidence to prove the extract pretended to be cited, and as being an attempt unnecessarily to fill up the record by substituting in questions long quotations from matters already admitted, and at the great expense of the Petitioner. Objection reserved by the Judge.)

RECORD.

In the
Superior
Court.

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
continued.

A. I do not find such a quotation as set out in that question. I do not find that sentence as set forth in the question.

Q. What do you find in it?

A. I find a sentence at page 101 of Synod minutes of the year 1875, which begins differently from that given in the question, the rest of which appears to be substantially set out in the question.

Q. Is the quotation you refer to a resolution of the General Assembly of the Church of Scotland?

A. It is contained in what is set out as a resolution of the General Assembly of the Church of Scotland on page 101 of said Synod minutes for 1875, being 10 an extract from the same.

Re-Examined without waiver of objections.

Q. Are the words of which you have just spoken as being part of an extract, correctly cited in the question asked you in cross-examination respecting it?

A. No.

Q. Are they a resolution, or simply a sentence in a resolution?

A. They are a sentence in a resolution.

Q. Was the minority that went out from the Presbyterian Church of 20 Canada in connection with the Church of Scotland in 1844 a large one, or a small one? In other words, will you explain or compare its strength with the majority which remained?

(Objected to as illegal and not arising out of the cross-examination, and moreover, as irrelevant to the issues. Objection reserved by parties.)

A. The minority that went out in 1844 numbered forty and the majority numbered fifty-six.

Q. In June, 1875, when a number of members of Synod left St. Paul's Church to go to the Victoria Skating Rink, will you explain whether the clerk and moderator of Synod left? 30

(Objected to as illegal and not arising out of the cross-examination, and, moreover, as irrelevant to the issues. Objection reserved by the parties.)

A. Yes.

Q. Did they take the records with them?

(Objected to as illegal and not arising out of the cross-examination, and, moreover, as irrelevant to the issues. Objection reserved by the parties.)

A. Yes.

Q. You mentioned Mr. Brodie's name as one of the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. Yes, I believe so. 40

Q. Will you specify in detail which are the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland in the regular service of the Church, which are the retired ministers, and which are the missionaries in the service of the Church, giving the total number?

A. The regular ministers are Rev. John Davidson, Rev. John McDonald, Rev. David Watson, Rev. Robert Dobie, Rev. Peter Watson, Rev. Neil Brodie, Rev. John Moffatt, Rev. Gavin Lang, Rev. A. J. Campbell and Rev. R. Burnet,

making ten. The retired ministers are Rev. Wm. Simpson, Rev. Thomas McPherson and Rev. Hugh Niven, making three. The missionaries are Rev. Mr. Hutchison, Rev. H. D. Steele, Rev. A. Shand and Rev. Mr. Fuller, making four.

Q. In all, how many ecclesiastics connected with the regular service of the Church?

A. Fourteen of ministers and missionaries, but besides that, two of the retired ministers at all events, Rev. Mr. Simpson and Rev. Mr. McPherson, are engaged in missionary work.

Q. Will you state what rights are implied in the invitation of the Synod to visiting people "to sit and deliberate?"

A. The rights are what the invitation implies—to sit and deliberate, that is, to take part in the debates and generally to act as members of court without voting.

Q. Will you explain what are the differences between the Church of Scotland and the Presbyterian Church of Canada in connection with the Church of Scotland on the one side, and the Presbyterian Church in Canada on the other, with regard to the power of the civil magistrate that you have referred to in your cross-examination, and explain also what you mean by the power of the civil magistrate?

(Objected to as not arising out of the cross-examination, and as illegal. Objection reserved by the parties.)

A. With regard to the first part of the question, the ministers and office-bearers of the Church of Scotland and of the Presbyterian Church of Canada in connection with the Church of Scotland take an obligation to adhere to the whole Confession of Faith in its entirety, including the twenty-third chapter of the Confession of Faith, "*of the Civil Magistrate*." The Presbyterian Church in Canada does not oblige its ministers to take an obligation to the whole Confession of Faith, especially in regard to that chapter which it leaves optional, thereby departing from the obligation to adhere to the whole Confession of Faith in its entirety. With regard to the second part of the question, the relation of the Church to the civil magistrate, that will be found set out in the twenty-third chapter of the said Confession of Faith.

Q. Do I understand you say that in the Church of Scotland and in the Presbyterian Church of Canada in connection with the Church of Scotland it is compulsory on the office-bearers and ministers to give a full adhesion at their ordination or induction to the whole Confession of Faith, including this twenty-third chapter relating to the power of the civil magistrate?

(Objected to as not arising out of the cross-examination, and as illegal. Objection reserved by parties.)

A. It is, and I have already stated so.

Q. Will you explain if the Canada Presbyterian Church allowed any relaxation of the obligation just referred to in the last question with regard to the twenty-third chapter of the Confession of Faith, or what was it?

(Objected to as entirely irrelevant to the issues, and as not arising out of the cross-examination. Objection reserved by the parties.)

A. The Canada Presbyterian Church not only allowed relaxation but had expurged, as I understand, at all events, or completely modified the twenty-third chapter referred to.

RECORD.

In the
Superior
Court.

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

Q. Now, this Canada Presbyterian Church is one of the Churches that united with the seceders from the Presbyterian Church of Canada in connection with the Church of Scotland?

(Objected to as entirely irrelevant to the issues, and as not arising out of the cross-examination. Objection reserved by parties.)

A. It is.

Q. Now, were the views entertained by the Canada Presbyterian Church and of the Presbyterian Church of Canada in connection with the Church of Scotland with respect to the said twenty-third chapter of the Confession of Faith, so incompatible with each other as to render a union of those Churches impossible without some modification of the views of the Presbyterian Church of Canada in connection with the Church of Scotland?

(Objected to as entirely illegal, irrelevant to the issues, and not arising out of the cross-examination. Objection reserved by the parties.)

A. The difference between the views of the Canada Presbyterian Church and of the Presbyterian Church of Canada in connection with the Church of Scotland were considered as so fundamental that at the time of the first secession in Canada, in eighteen hundred and forty-four, the Presbyterian Church of Canada, the predecessor of the Canada Presbyterian Church, added to the obligation imposed upon its ministers the word "Erastian," describing one of the errors to be disowned, the said word "Erastian" referring to the views stated to be held by the Church of Scotland and by the Presbyterian Church of Canada in connection with the Church of Scotland, with regard to the duty of the civil magistrate.

Q. Were these views of so incompatible a character with each other as to render union impossible without a modification of the views held by the Presbyterian Church of Canada in connection with the Church of Scotland?

(Objected to, as entirely illegal, irrelevant to the issues, and not arising out of the cross-examination, such a union, moreover, not being dependent on the witness' opinion or the opinion of any other individual man. Objection reserved by the parties.)

A. No union could take place without a compromise of principles on one side or on both.

Q. Under the preamble and basis of union at present existing, when a minister would be ordained or inducted in the Presbyterian Church in Canada, would it be necessary that he should believe and subscribe to the entire Confession of Faith as he would have been bound to do before the said union and now in the Presbyterian Church of Canada in connection with the Church of Scotland?

(Objected to, as illegal, not arising out of the cross-examination, and moreover, because the said basis of union is a document which must speak for itself, and cannot be interpreted by the witness, its terms being perfectly clear. Objection reserved by the parties.)

A. No.

Correction.

To my answer on page 61 of the foregoing deposition (page 206, line 27, of this record), namely, "Of St. Andrew's Church, Ottawa, the congregation I have 'already spoken of,'" I desire to add: "Which was then a congregation of the 'Presbyterian Church of Canada in connection with the Church of Scotland.'"

To my answer on page 97 (page 220, line 32, of this record), namely, "It does not." I wish to add "Ministers of the Church of Scotland and of the Presbyterian Church of Canada in connection with the Church of Scotland take an obligation to adhere to the whole Confession of Faith, and are not allowed to hold, teach or preach any doctrine contrary to, and inconsistent with those contained in it."

And further deponent saith not, and this deposition having been read to him, he declares it to contain the truth.

S. A. ABBOTT, Stenographer.

RECORD.
In the
Superior
Court.

No. 47.
Deposition
of Douglas
Brymner,
produced by
Petitioner,
filed 2nd
July 1879.
continued.

Schedule No. 63.

Reverend Gavin Lang, of the city of Montreal, minister, aged forty-three years, a witness recalled and examined, by consent of parties, on the part of the Petitioner, this second day of July, eighteen hundred and seventy-nine, who, being duly sworn, deposes and saith:

I have already been examined as a witness in this case.

Q. Will you state if the Presbyterian Church of Canada in connection with the Church of Scotland still keeps up an official connection with the Church of Scotland in Scotland?

A. It does.

Q. Have you, in your own possession, any letter or document showing the continued existence of that connection?

A. As convener of the Correspondence Committee of the Presbyterian Church of Canada in connection with the Church of Scotland, which committee, I will explain was appointed by the said Church to correspond with the Colonial Committee of the Church of Scotland and the General Assembly of the Church of Scotland, I received, about the sixteenth of June last, a letter, the original of which I now produce and file as Petitioner's Exhibit Z2.

(Respondents object to the filing of the said document on the ground that the same has not been regularly proved in this case, and also as irrelevant. Objection reserved by parties.)

Said letter is signed by the Rev. Robert H. Muir, convener of the Colonial Committee of the Church of Scotland, and is addressed to me in my above-mentioned capacity. Said letter is in the following terms:—

"G. A. Colonial Mission,
22 Queen Street, Edinburgh,
3rd June, 1879.

To the

Rev. Gavin Lang, convener of the Correspondence Committee of the Presbyterian Church of Canada in connection with the Church of Scotland.

Reverend and dear Sir,

I have the pleasure of addressing you on behalf of the Colonial Committee, under instructions of the General Assembly of the Church of Scotland, to inform you that the Reverend George W. Sprott has been deputed by the Assembly to the

No. 48.
Deposition
of the Rev.
Gavin Lang,
produced by
Petitioner,
filed 2nd
July 1879.

RECORD

In the
Superior
Court.

No. 48.
Deposition
of the Rev.
Gavin Lang,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

Synod of the Presbyterian Church of Canada in connection with the Church of Scotland; and hoping that you may be able to arrange with Mr. Sprott for his having the opportunity, most convenient for the Synod, of discharging the duty which the General Assembly has entrusted to him.

I am, Reverend and dear Sir,

Yours truly,

ROBERT H. MUIR, Convener of Col. Com.

Q. Who is this Mr. Sprott referred to in the said letter?

A. Mr. Sprott was appointed by the General Assembly of the Church of Scotland to visit Canada, and this letter is intimating his appointment as deputy to the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. Did he come to this country?

A. He has come to this country, and I have here a letter from Mr. Sprott, part of which refers to the letter that accompanied that petition. Mr. Sprott came out on the mission referred to in that letter, and in forwarding said letter, herein filed as Z2, to me, sent in addition a private note from himself dated June sixteenth, in which he says with reference to the purpose of his visit: "I am very sorry to have missed you here, as my instructions are to communicate with you as to the best time and place for a conference with the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland. This is the first article in my programme." I might be allowed to add that I was not in Montreal at the time of Mr. Sprott's arrival, which necessitated his forwarding instead of handing to me said letter Z2, from Rev. Robert H. Muir. I now produce and file as Petitioner's Exhibit Z3, at enquete, said letter from the Rev. George W. Sprott, dated at Montreal, June sixteenth. The said Rev. George W. Sprott, is the same person referred to in the letter Z2, as "Mr. Sprott," also produced and filed by me to-day.

(Respondents object to the filing of said letter Z3. Objection reserved by the parties).

I have no doubt about the signature at the bottom of letter Z3, being Mr. Sprott's signature.

Cross-Examined without waiver of objections.

Q. Do you know the signature of the Rev. Robert H. Muir?

A. Perfectly.

Q. Have you seen him write his name?

A. I think I have.

Q. Was the only mission to Canada of the Rev. George W. Sprott the one which you have spoken of?

A. It is the only mission I have anything to do with.

Q. Are you not aware that he was appointed specially by the Assembly of the Church of Scotland to visit the Presbyterian Church in Canada?

A. I have no personal knowledge.

And further deponent saith not, and this deposition having been read to him, he declares it to contain the truth.

S. A. ABBOTT, Stenographer.

Schedule No. 64.

RECORD.

Sir Hugh Allan, of the city of Montreal, of Ravenscraig, Knight, aged sixty-eight years, and witness produced on the part of the Petitioner, this second day of July, eighteen hundred and seventy-nine, who being duly sworn, deposeth and saith:—

Q. You have been made one of the Respondents in this case?

A. Without my consent.

Q. I believe you are one of those who believe in the claims of Mr. Dobie being fairly ventilated before the Courts?

10 A. Yes.

Q. Of what Church organization are you a member?

A. Of the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. How long have you been a member of said Church?

A. About forty-six years.

Q. I suppose you have been a member of it since you came to reside in this country?

A. Not entirely; I became a member of it within a year or two after I came here, that is to say, I belonged to the Church, but I was not a communicant.

20 Q. Have you been continuously for this last forty-six years a member of it?

A. Continuously.

Q. Before you came to this country you resided in Scotland?

A. I did.

Q. What Church did you belong to there?

A. I was a boy at school then. My father belonged, I think to what was called the Secession Church.

Q. What particular congregation of the Presbyterian Church of Canada in connection with the Church of Scotland do you belong to?

30 A. I belonged to Dr. Mathieson's congregation until he died, and after that with various clergymen who have come since his death, and now with Mr. Lang.

Q. These congregations were all in connection with St. Andrew's Church, Montreal?

A. Yes, all together, following one another.

Q. I believe you had a good deal to do with the Clergy Reserves and the Temporalities Fund for a number of years?

A. I was secretary to the fund and to the Temporalities' Board altogether for several years.

Q. And you were afterwards chairman for many years, were you not?

40 A. Yes, I think I was, but I am not quite positive; I know I was officially connected with it.

Q. For how many years were you officially connected with the Temporalities' Fund?

A. From the time of its formation. It was formed, if I remember right, a year or two before the division of the Clergy Reserves.

Q. Can you state shortly how it was that the Presbyterian Church of

In the
Superior
Court.

No. 49.
Deposition
of Sir
Hugh Allan,
produced by
Petitioner,
filed 2nd
July 1879.

RECORD. Canada in connection with the Church of Scotland received this State aid as it were, and that the other Presbyterian bodies did not?

*In the
Superior
Court.*

No. 49.
Deposition
of Sir
Hugh Allan,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

(Objected to as illegal, and the origin of said fund and the manner in which it was received by the Synod of the said Church being alleged in the Petitioner's petition to be by Acts of Parliament and by virtue of resolutions of the Synod of said Church, which cannot be proved by parole evidence, and which have already been admitted in the admissions signed by the parties in this case. Objection reserved by the parties.)

A. The original grant of the Clergy Reserve lands, made under George III, was for a Protestant clergy. For a long time the Church of England considered itself the only Protestant clergy in Canada, but at the instances chiefly of the Hon. Wm. Morris and others a claim was made to a share of the fund by the Church of Scotland, on the ground that it was also an Established Church, being established in Scotland, and therefore established in Canada. A controversy raged for a number of years regarding this, but the end of it was that an arrangement was come to, by which, under certain circumstances the land was to be divided between the two Churches, and between one or two other Churches which also got shares in it; I think the Roman Catholic Church and the Methodist Church, if I remember right, also got small shares. At any rate it was decided that the rights of the Church of Scotland should be considered as established; and it remained in that state until the Parliament and Government of this country commuted the whole into a money allowance.

Q. In this controversy you have referred to, did the Presbyterian Church of Canada in connection with the Church of Scotland in this country take up the ground that it was a branch of the Church of Scotland?

(Objected to, as illegal and not in issue. Objection reserved by the parties.)

A. Certainly; as the only legal branch of the Church of Scotland, because not under the powers of the Church itself, but as recognized by the Church as in connection with it.

Q. I suppose you are aware that in eighteen hundred and seventy-five a large number of ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, left it and formed with certain other people another Church called the Presbyterian Church in Canada?

(Objected to, as illegal and irrelevant. Objection reserved by the parties.)

A. I am aware of it.

Q. Notwithstanding this secession that took place at the time (1875) did any considerable number of the people, ministers and elders connected with the Presbyterian Church of Canada in connection with the Church of Scotland remain in the last-mentioned Church, and keep up their connection with it and its organization?

A. The congregation with which I was connected did so, and I believe there were a considerable number of other ministers, and a considerable number of other people also, but I could not say how many.

Q. Are you aware that quite a number of influential people have maintained their connection with it?

A. A very considerable number in Montreal; I do not know throughout the country much about it; but I fancy the same proportion elsewhere.

Cross-Examined without waiver of objections.

RECORD.

Q. You are one of those that dissented from the union of Churches which took place in eighteen hundred and seventy-five?

A. I was one of those who remained in connection with the Church of Scotland.

Q. You objected to this union?

A. I could not object to a thing I was not a party to. I objected to go over to it; and I did not take part in the said union.

Q. You have remained in connection with St. Andrew's Church ever since?
A. I have.

Q. What are your reasons for saying that the Presbyterian Church of Canada in connection with the Church of Scotland has existed continuously ever since eighteen hundred and seventy-five?

A. Because I have been one of the body myself.

Q. What are your reasons for saying you have been one of the body?

A. Because I have belonged to it all the time continuously.

Q. Have you any other reason for saying that you belonged to it continuously, except that you have continuously remained in connection with St. Andrew's Church, Montreal?

A. I am aware that the organization has continued, by reports from all the different congregations which form part of it, and which, I suppose, to this day continue to form part of it.

Q. Have you any personal knowledge as to those reports that you refer to?

A. I do not know what the meaning of the question is. What personal knowledge can I have?

Q. Have you attended any church courts in any representative capacity since the fifteenth of June, eighteen hundred and seventy-five.

A. I have not.

Q. Are you perfectly sure that no Presbyterian bodies besides the one you have spoken of, the Presbyterian Church of Canada in connection with the Church of Scotland, received any share of the proceeds of the Clergy Reserves money?

A. I am not sure.

And further deponent saith not, and this deposition having been read to him, he declares it to contain the truth.

S. A. ABBOTT, Stenographer.

Schedule No. 65.

James Croil, of the city of Montreal, in the district of Montreal, aged fifty-eight years, a witness produced on the part of the Petitioner, on this second day of July, in the year of our Lord, one thousand eight hundred and seventy-nine, who being duly sworn, deposeth and saith:—

Q. In what way are you in the employ of the Board, Respondents in this cause?

A. Secretary-Treasurer.

*In the
Superior
Court.*

No. 49.
Deposition
of Sir
Hugh Allan,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

No. 50.
Deposition
of James
Croil,
produced by
Petitioner,
filed 2nd
July 1879.

RECORD.

*In the
Superior
Court.*

No. 50.
Deposition
of James
Croil,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

Q. How long have you been such ?

A. From ten to twelve years.

Q. What are your duties as such ?

A. My duties as such are to pay the ministers half-yearly, to take charge of all the funds, collect the interests from investments, make reports and generally conduct the business.

Q. Have the Board any investments out of the Province of Quebec ?

A. Not at present, and have never had since I have been secretary of the Board. I am aware that before my time the Board had money invested in the Commercial Bank of Upper Canada, and in bonds and debentures of the town of Peterborough, in the Province of Ontario. I now remember that this investment in Peterborough bonds was held since I have been secretary of the Board.

Q. Where is the business of the Board generally transacted ?

A. In my office in Montreal.

Q. Is not certain business transacted in other places, at the meetings of Synods ?

A. There are no meetings of the Board held now, other than at my office.

Q. Were there not meetings of the Board held in Ontario and Quebec at the places where the Synod happened to meet, that is, prior to the 15th June, 1875 ?

A. Yes ; meetings had been held previous to that date, but none have been held since.

Q. Prior to the said 15th June where were the elections held to fill vacancies occurring in the Board ?

A. Members of the Board were appointed by the Synod.

Q. In what places was the Synod held ?

A. In different places throughout Upper and Lower Canada.

Q. Did the meetings alternate between Upper and Lower Canada ?

A. They did not alternate, the majority of meetings were held in Upper Canada.

Q. The vacancies on the Board as they occurred were filled at these different meetings of Synod held at these different places, were they not ?

A. These elections to fill vacancies on the Board were in virtue of the terms of the Act of Incorporation of the Board, 22nd Victoria, 1858.

Q. Can you state what was the number of original commutors on the Clergy Reserves Fund, that portion of the fund coming to the Presbyterian Church of Canada in connection with the Church of Scotland ?

A. Seventy-three.

Q. How many of these were surviving on the 15th of June, 1875.

A. Thirty-three.

Q. How many of these joined the union, and how many did not ?

A. Twenty-six joined the union, and seven did not. In saying that twenty-six joined the union, I mean that their names continued on the roll.

Q. What roll do you mean ?

A. The roll of the Assembly.

Q. What were the names of the seven who did not join the union ?

A. The names of the seven who did not join the union, so far as are known

to me are : Rev. Thomas McPherson, Rev. William Simpson, Rev. John Davidson, Rev. Fred. P. Sym, Rev. David Watson, Rev. Robert Dobie and Rev. Robert Burnet. The Rev. Robert Dobie is the Petitioner in this cause.

Q. Can you give us the places of residence of these different gentlemen on the 15th June, 1875?

A. The Rev. Thomas McPherson, Lancaster, Province of Ontario; Rev. William Simpson, Lachine, Province of Quebec; Rev. John Davidson, North Williamsburg, Province of Ontario; Rev. Frederick P. Sym, New Edinburgh, Province of Ontario; Rev. David Watson, Thorah, Province of Ontario; Rev. Robert Dobie, Milton, Province of Ontario; Rev. Robert Burnet, Hamilton, Province of Ontario. I wish to state that Mr. Sym, one of the seven, has since joined the Presbyterian Church in Canada, and I am not certain that by any act of his own that he ever officially connected himself with the Petitioner.

RECORD.

In the
Superior
Court.

No. 50.

Deposition
of James
Croil,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

Q. Will you state the state of the fund belonging to the Board, Respondents, on the 15th of June, 1875?

A. You mean the amount of money held by them.

Q. Yes?

A. The amount of the investments on the 1st of May, 1875, which remained about the same on the 15th June, was of the par value of \$463,371.52.

Q. That was the property of the Presbyterian Church of Canada in connection with the Church of Scotland, was it not?

A. The property of the Temporalities Board.

Q. The sum of money you have just mentioned was a sum controlled by the Board, Respondents, for the benefit and in the interest of the Presbyterian Church of Canada in connection with the Church of Scotland up to that date?

A. Yes.

Q. After that date it remained under the administration of the Board, in virtue of the amendments obtained from the Provincial Legislature, did it not?

A. Yes.

Q. What was the amount of said fund in the hands of the said Board on the 1st of May, 1878?

A. The par value of the fund was \$403,976.52.

Q. Since then, and up to December, 1878, some payments were made out of the fund, were there not?

A. Yes.

Q. Can you approximately state about what the amount of the fund was after the deduction of these payments on the 31st of December, 1878?

A. \$389,120.00.

Q. To what extent have the Respondents drawn upon the capital of the said Temporalities Fund since the 15th June, 1875, up to the 31st December, 1878?

A. About \$74,251.52.

Q. Who were the members of the Board, Respondents, on the 14th June, 1875?

A. Rev. John H. Mackerras, Rev. D. M. Gordon, Rev. John Cook, Rev. John Jenkins, Rev. Gavin Lang, Messrs. James Michie, Alexander Mitchell, William Darling, Sir Hugh Allan, John L. Morris, Robert Dennistoun and William Walker.

RECORD

*In the
Superior
Court.*

No. 50.
Deposition
of James
Croil,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

Q. Under the legislation of the Province of Quebec relating to the Board, Respondents, the last-named members are still members of the said Board, are they not?

A. Still members.

Q. Provided the legislation of the Province of Quebec had not made provisions for the permanency of the members of the said Board, which of them would have retired under the Statute 22 Vic., ch. 66, in the month of June, 1876?

A. Rev. John Jenkins, Rev. Gavin Lang, ministers; Messrs. Robert Denistoun and William Walker, laymen.

Q. Which members of the Board would have retired under the same circumstances in the month of June, 1877?

A. Rev. D. M. Gordon, Rev. John Cook, ministers, and Sir Hugh Allan and John L. Morris, laymen.

Q. Which members of the said Board, Respondents, would have retired under the same circumstances in the month of June, 1878?

A. Rev. John H. Mackerras, minister, and William Darling and Alexander Mitchell, laymen.

Q. Each of the said members of the Board named by you have identified themselves with the Presbyterian Church in Canada?

A. All the said members except Sir Hugh Allan and the Rev. Gavin Lang.

Q. Did the Rev. John Cook, of Quebec, the Rev. James C. Muir, of Georgetown, and the Rev. George Bell, of Walkertown, commute their claims upon the proceeds of the Clergy Reserves?

A. Yes.

Q. They were, as the Petitioner was, what are ordinarily called commuting ministers?

A. Yes.

Q. The three last named clergymen are now ministers in connection with the Presbyterian Church in Canada?

A. Yes.

Q. How much of the money of the fund administered by the Respondents have the said Rev. John Cook, the Rev. James Muir and the said Rev. George Bell, respectively received from the 15th June, 1875, to the 31st December, 1878?

A. At the rate of \$450 per annum each.

Q. Now, were the Rev. John Fairlie of L'Orignal, the Rev. David W. Morison of Ormstown, the Rev. Charles A. Tanner of Richmond, of the number of the original commutators of claims upon the proceeds of the Clergy Reserves?

A. No; they were not.

Q. How much of the fund administered by the Respondents have the said three last mentioned clergymen received from the 15th June, 1875, to the 31st December respectively?

A. At the rate of \$200 per annum each.

Q. I suppose since the 15th June, 1875, there have been no elections for the purpose of filling up vacancies of the Board, Respondents?

A. No; none.

Q. What were the names of the four ecclesiastical associations that on the

15th of June, 1875, amalgamated for the purpose of forming the Presbyterian Church in Canada?

A. The Presbyterian Church of Canada in connection with the Church of Scotland, the Church of the Maritime Provinces in connection with the Church of Scotland, the Presbyterian Church of the Lower Provinces, and the Canada Presbyterian Church.

Q. The three last named Churches had no claim whatever to the sum of \$463,371.52, previously referred to, previous to the 15th June, 1875?

A. No.

Q. Previous to the 15th June, 1875, those four religious organizations were separate and distinct organizations, each having its own independent government?

A. Yes.

Q. Practically for the purpose of government they were, previous to the 15th June, 1875, as separate as the Church of England is from the Presbyterian Church of Canada in connection with the Church of Scotland?

A. Each was independent of the others in its jurisdiction and government.

Q. These four separate organizations were unconnected with each other before the amalgamation, were they not?

A. They were.

Q. Now, the members and adherents of the Canada Presbyterian Church, and of the Church of the Maritime Provinces in connection with the Church of Scotland, and of the Presbyterian Church of the Lower Provinces appear to have gone into this amalgamation unanimously, did they not?

(Objected to by Respondents pleading, as illegal and irrelevant. Objection reserved).

A. I do not know.

Q. Did you ever hear of any dissent against the amalgamation referred to on the part of the members and adherents of the three last mentioned Churches?

(Objected to by Respondents pleading, as illegal and irrelevant. Objection reserved).

A. No.

Q. You are aware, Mr. Croil, that there was a dissent against the amalgamation of the said four Churches, not merely of a formal character, but on the part of several members and adherents of the Presbyterian Church of Canada in connection with the Church of Scotland?

(Objected to by Respondents pleading, as illegal and irrelevant. Objection reserved).

A. I believe there was.

Q. What was the name of the united church formed of the said amalgamating bodies?

A. The Presbyterian Church in Canada.

Q. I think you know the Petitioner personally, Mr. Croil?

A. Yes.

Q. You were a member of his congregation in Osnabruck, and one of his elders there?

A. I was.

*In the
Superior
Court.*

No. 50.
Deposition
of James
Croil,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 50.
Deposition
of James
Croil,
produced by
Petitioner, son.
filed 2nd
July 1879.
—continued.

- Q. Do you know of what charge he is a minister now ?
A. Milton, Ontario.
Q. How long have you known the Petitioner to have been a minister of good standing officiating ?
A. Since 1853.
Q. Were you in Osnabruck, Mr. Croil, when Mr. Dobie came there ?
A. I was.
Q. Where did he come from ?
A. St. Andrew's Church, Montreal, where he had been assisting Dr. Mathieson.
Q. About how long had he been assistant for Dr. Mathieson, as nearly as you can remember ?
A. About ten months.
Q. He had not, in fact, been long out from Scotland ?
A. No ; not more than a year, I think.
Q. Have you any doubt that he was Dr. Mathieson's assistant, and acted in the capacity of a minister assisting Dr. Mathieson in St. Andrew's Church, Montreal ?
A. In a subsidiary sense he could neither assist Dr. Mathieson in the celebration of baptism nor the communion, inasmuch as he was not ordained.
Q. But could he not preach and instruct people from the pulpit ?
A. Certainly ; just as well as any layman could.
Q. Do you pretend to say that he was merely a layman while assisting Dr. Mathieson in Montreal.
A. I have no opinion upon it.
Q. Are you not aware that when the Petitioner came to this country he came as a trained clergyman, fully licensed to preach the Gospel ?
A. I believe he did.
Q. The ordination refers to the formal and special appointment to preach and teach in connection with a particular congregation ?
A. Generally, but not always.
Q. From the time of his ordination to the charge in Osnabruck he became a member of the Presbytery in Glengarry, did he not ?
A. He did.
Q. That was a Presbytery under the ecclesiastical jurisdiction of the Presbyterian Church of Canada in connection with the Church of Scotland ?
A. Yes.
Q. The "Mr. Robert Dobie" referred to as one of the ministers present at the first diet held in St. Andrew's Church, in Montreal, on the 10th of January, 1875, more especially set out at line 23, page 5, of Petitioner's factum, is the Petitioner, is he not ?
A. Yes.
Q. On the 9th day of May, 1853, the Petitioner, the Rev. Robert Dobie, was one of those ministers who was entitled to the benefits derivable from the proceeds of the Clergy Reserves ?
A. I do not admit that he was entitled.

10

20

30

3

40

Q. Can you deny it?

A. I will give you grounds for it if you choose, inasmuch as he was not ordained until October following.

Q. Is it not a fact that the Petitioner was placed as early as 1852 or 1853 upon the list of those who were entitled to benefits derivable from the proceeds of the Clergy Reserves?

A. I have no certain information upon that point.

Q. I suppose you are aware and you have no doubt heard that the Petitioner is one of those who had a claim to commute by the Government, and did
10 commute it?

A. I have no doubt that he did commute it.

Q. Did you ever hear any suspicion raised against his claim by the Church
or any one else?

A. I always had a doubt in my own mind about it.

Q. Did you ever hear any doubt about his right to be placed upon the list of the beneficiaries of the Clergy Reserves? and if so, did such doubt ever have the effect of having his claim investigated, or of having him deprived of the benefits derivable from the Clergy Reserves?

(Objected to by Respondents pleading as illegal and irrelevant. Objection
20 reserved).

A. I never heard any objection previous to the commutation to his right to be put on the list, but I have heard doubt subsequently to his right to commute.

Q. Such doubts have not had the effect of having his claim investigated or having him deprived of the benefits derivable from the Clergy Reserves? The fact is, he has been drawing the regular allowance of \$450 a year since 1855 without dispute of any one?

A. He has. At page 38 of the Acts and Proceedings of Synod of the Presbyterian Church of Canada in connection with the Church of Scotland for 1875 (in said Exhibit "BBB"), the Petitioner is recognized as one of the com-
30 muting ministers by the Synod of the said Church.

Q. Did the Board, Respondents, draw upon the capital of the fund under its control before the local legislation above referred to was obtained?

(Objected to as not in issue. Objection reserved.)

A. I think not.

Cross-Examined without waiver of Objections.

Q. In speaking of the good standing of the said Petitioner since the year 1853, between what periods of time do you refer to?

A. From 1853 to 1875.

Q. That was the time you were connected with him in connection with the
40 Presbyterian Church of Canada?

A. That was the time.

Q. Since that time have you had any church connection with him?

A. None whatever.

Q. I understand that when Mr. Dobie came out to this country from Scot-

RECORD.

In the
Superior
Court.

No. 50.
Deposition
of James
Croil,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

RECORD. land, he was what is called a licentiate or probationer of the Church of Scotland in Scotland ?

*In the
Superior
Court.*

A. Yes.

Q. You have spoken of the par value of the funds in 1878 and at other dates. Was that the real actual marketable value at these times ?

A. No ; in some cases investments were worth more than the par value and others were worth less.

Q. Generally speaking were not the funds which were invested in stocks worth a great deal less than par value ?

A. They may have been. I do not know.

No. 50.
Deposition
of James
Croil,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

Q. How long ago is it since the Board ceased to hold any investment in Ontario ?

A. It must be about ten years ?

Q. How many of the thirty-three commuting ministers whom you state were surviving on the 15th day of June, 1875, were still surviving at the time of the institution of this suit in December, 1878 ?

A. Three have since died : Rev. Alexander Lewis, Rev. Alexander Spence and the Rev. John Towse.

Q. Since June, 1875, up to the present time, is it not the case that the said Petitioner has received without protest from the Board, Respondents, his semi-annual payments in the same way as he had been receiving them before the said June, 1875, with the exception of the last two semi-annual payments ?

A. He did receive them in the same way as formerly, with the exception just stated.

Re-Examined.

I produce a blank form of the cheque by which the half-yearly stipends of the ministers are paid, marked X.

We have made no alteration in the cheque since the union in 1875, the cheque has remained just the same as it was previously, the name of the Board having remained the same.

I am the Secretary-Treasurer. I countersign the cheques as Treasurer, along with the Chairman, who signs them as Chairman.

Q. You did not consider you was doing to Petitioner any extraordinary favour in paying him the amount of those cheques ?

A. I did not pretend to do so.

Q. You did not consider that the Petitioner had placed himself outside the pale of the Church, or otherwise disqualified himself from being entitled to receive his annual stipend, notwithstanding the fact that he did not unite with the Presbyterian Church in Canada ?

(Objected to as illegal and not arising out of re-examination, and, moreover, as involving a question of law which the witnesses' opinion cannot affect. Reserved).

A. I certainly did not think that the Petitioner had disqualified himself (by refusing to join the union) from participating in the benefits of the Temporalities' Fund, inasmuch as special provision had been made for such cases by the Synod, and also by the Legislature.

Q. Do you pretend to say that he required any aid or favor from the Synod to enable him to draw his half-yearly stipends after the union?

(Objected to as illegal and not arising out of re-examination, and, moreover, as involving a question of law which the witnesses' opinion cannot affect. Reserved).

A. No; I do not.

Q. The provisions you have just referred to as having been made by the Legislature is contained in the Acts of the Local Legislature, which is sought to be impugned by the Petitioner's petition?

10 A. Yes; the acts of the legislatures of Ontario and Quebec.

And further deponent saith not; and this, his deposition, having been read over to him, he declares it to contain the truth.

H. CUTT, Stenographer.

RECORD.
In the
Superior
Court.

No. 50.
Deposition
of James
Croil,
produced by
Petitioner,
filed 2nd
July 1879.
—continued.

Schedule No. 66.

No. 51.
Deposition
of James
S. Mullan,
witness for
Respondents
filed 2nd
July 1879.

On the second day of July, in the year of our Lord one thousand eight hundred and seventy-nine, personally came and appeared James S. Mullan, of Osnabrock, in the Province of Ontario, Presbyterian Clergyman, aged forty-six years, and witness produced on the part of the Respondents, with the exception of Sir Hugh Allan and Rev. Gavin Lang, and examined by consent of parties, the said 20 witness being about to leave the Province, who being duly sworn, deposeth and saith: I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

I was ordained as a minister of the Presbyterian Church of Canada in connection with the Church of Scotland in 1861.

I was still a minister of said Church on the 15th June, 1875.

The Synod of the said Church was holding its session in Montreal, in St. Paul's Church, on the said 15th June.

I remember that on the 14th day of June of said year I was one of ten members of said Synod who dissented from a resolution of the said Synod carried on 30 that day, to the effect that the Synod should repair on the next day, the 15th June, to the Victoria Skating Rink for the purpose of consummating the union of Churches which is in question in this cause.

I remember that on the next day, the 15th of June aforesaid, when the said Synod met in St. Paul's Church, it adjourned to meet in the said Skating Rink, or Victoria Hall, as it was called, at ten minutes before eleven in the forenoon of said day.

Q. Did you then immediately adjourn with the rest of the members of the said Synod to the said Victoria Hall?

A. No.

40 Q. You remained behind in St. Paul's Church?

A. Yes.

Q. What members of the Synod remained behind with you?

A. The Rev. Robert Burnet, of Hamilton; the Rev. Robert Dobie, of Milton; the Rev. David Watson, of Thorah; the Rev. John Davidson, of Wil-

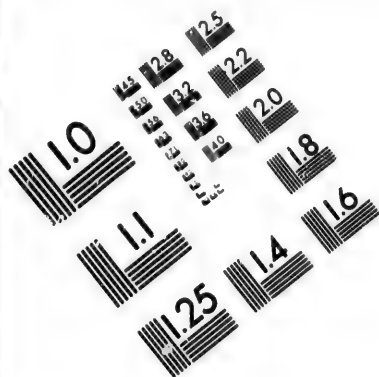
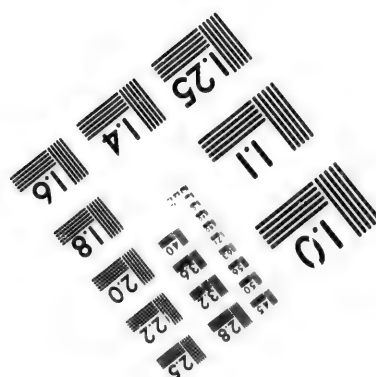
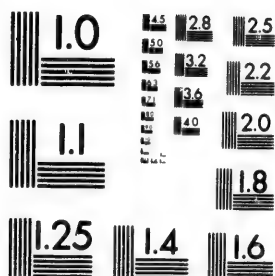
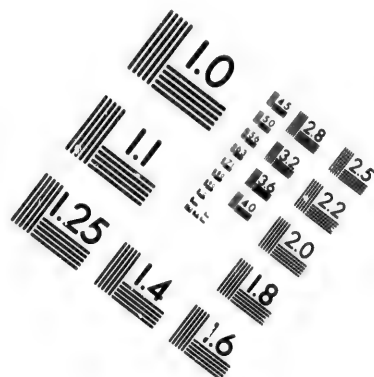


IMAGE EVALUATION TEST TARGET (MT-3)



28 25
32 22
20

01

RECORD. liamsburg; the Rev. Thomas McPherson, of Lancaster; the Rev. John Macdonald, of Beachridge; and the Rev. William Simpson, of Lachine. There were also two elders, who were members of the Synod—one Mr. McMillan and one Richard McCrimmon.

*In the
Superior
Court.*

No. 51.
Deposition
of James
S. Mullan,
witness for
Respondents
filed 2nd
July 1879.
—continued.

Q. Will you kindly state what took place in the said St. Paul's Church amongst those who remained, immediately after the rest of said Synod had repaired to the Victoria Hall?

A. The Rev. Robert Dobie was appointed moderator, and the Rev. Robert Burnet was appointed clerk of Synod.

Q. How were they appointed?

A. They were appointed by vote and resolution of those who remained behind. 10

Q. Before moving the appointment of the moderator and clerk did these said gentlemen attempt to constitute the meeting with prayer, &c?

A. I would not be sure whether it was before or after the appointment of the moderator and clerk that the meeting was opened in the usual form.

Q. What next took place as far as you were concerned after the said motion to appoint moderator and clerk?

A. Immediately after that, I went up and spoke to the Rev. Mr. Dobie who had taken the chair as moderator, and asked him if they had complied with certain standing laws in our Church, and he asked the Rev. Mr. Burnet if he had done so, and he replied not, then I replied that for this and other reasons the whole proceedings were illegal. 20

Q. What did you do then?

A. The sederunt was taken; that is, the names of those present were recorded by the said Rev. Burnet the clerk.

Q. What next?

A. I was asked my name and I refused to have my name on the roll.

Q. Is it not a fact that there were only ten members of the Synod then present? 30

A. Yes.

Q. What next did you do?

A. I then left the said St. Paul's Church and went to the Victoria Skating Rink.

Q. What did you do when you got to the said Victoria Skating Rink?

A. I waited until the preliminaries were gone through consummating the union of the Churches.

Q. Was your name called out in the Victoria Skating Rink by any one?

A. Yes.

Q. Who called it out? 40

A. The clerk of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, which had repaired there.

Q. His name, please?

A. The Rev. John H. Mackerras.

Q. How long were you there before the articles of union were signed?

A. I should say I was there three-quarters of an hour before, perhaps more.

Q. I suppose a good deal of time was occupied in calling out the roll of the members of the Synod who had left St. Paul's Church to meet in the Rink?

A. Yes.

Cross-Examined.

Q. What Church are you now minister of?

A. Minister of the Presbyterian Church in Canada.

Q. Which congregation do you officiate for?

A. I have no regular charge just now.

Q. How long is it since you had a regular charge or congregation?

10 A. I resigned my charge at Osnabruck a year ago last January.

Q. You have had no charge or congregation since?

A. No.

Q. Is this because you did not want a charge or congregation, or because you did not succeed in getting one?

A. Because I did not succeed in getting one.

Q. I understand that you were of opinion on the 15th of June that the protest made on behalf of Mr. Dobie and those who acted with him against the consummation of the union was illegal, because it was not accompanied with the tender of a shilling?

20 A. Not that, but because each one dissenting did not deposit twenty-five cents.

Q. You were under the impression that it was an essential formality in connection with the validity of the objection of the union, that each of the dissentients should have deposited a twenty-five cent piece, or a quarter, at the time of objecting to the consummation of the union?

A. It was one of the standing rules of the Synod that any one dissenting should pay twenty-five cents.

30 Q. Are you aware that a notarial protest (copy of which is filed in this cause as Respondents' Exhibit "M N,") was, on the fifteenth of June, eighteen hundred and seventy-five, served through the ministry of a notary, upon the moderator of the Synod, in St. Paul's Church, before the withdrawal from it of those who went to the Skating Rink?

A. I remember a notary coming in and handing a document to the clerk. Whether it was on the fourteenth or fifteenth, I cannot swear.

Q. Was the document you refer to as handed by a notary to the clerk, read before the Synod?

A. Yes.

Q. And before the withdrawal of the members to the Skating Rink?

40 A. Of course it was; it was either that day or the previous day. Instead of giving it that way, I would say that I am not aware of any document in the way of a protest being handed in to the Synod beyond the one in which I was a party.

Q. Did you not say a notary came into the Assembly and handed a document to the moderator or clerk?

A. I did.

Q. Did you not yourself, on the fourteenth June, sign a protest against

*In the
Superior
Court.*

No. 51.
Deposition
of James
S. Mullan,
witness for
Respondents
filed 2nd
July 1879.
—continued.

RECORD

*In the
Superior
Court.*

No. 51.
Deposition
of James
S. Mullan,
witness for
Respondents
filed 2nd
July 1879.
—continued.

the consummation of the union of the Presbyterian Church of Canada in connection with the Church of Scotland with the other charges referred to, and is not such protest correctly set out at pages 35 and 36 of the minutes of Synod dated the fourteenth June, eighteen hundred and seventy-five?

A. Yes, I believe it is.

Q. You signed that protest in conjunction with the present Petitioner and others?

A. I did.

Q. And the signature, "J. S. Mullan," attached to that document is your signature?

A. It is my signature, or at least a representation of it.

Q. You say there was a prayer offered up, after Mr. Dobie was put into the chair. Now, is it not a fact that it was not the ordinary prayer constituting the Synod, but a prayer for the guidance of the distressing condition of the Church?

A. I mean to say that the meeting then was opened in the usual way in which the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland has been opened since I became a minister of it.

Q. Have you mentioned the names of all those who were present in St. Paul's Church after the withdrawal of certain members to the Victoria Skating Rink?

A. I think I have mentioned all the names who were acknowledged members of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. Was there any one else there?

A. Yes.

Q. Give their names?

A. I could not give you the various ones who had come there from curiosity, or perhaps interested, as there generally are on these occasions.

Q. Was not Mr. Douglas Brymner present from the time of the withdrawal of certain parties to the Victoria Skating Rink, during the whole of the time that you were present?

A. I believe he was.

Q. Before you left, Mr. Mullan, you stated that you asked the Rev. Mr. Dobie if he had complied with certain standing laws in the Church. Was not your enquiry in reference to the deposit of the twenty-five cents or quarter of a dollar?

A. Not altogether, but that was one part of it.

Q. Is there any regular form for the opening of the Synod?

A. There is; I am not aware that there is any printed form.

Q. Did not those who remained behind in St. Paul's Church proceed and conduct their business as if they were the continuation, and in fact, the same Synod as had been regularly appointed in that building on that morning?

A. No, sir.

Q. In what respect did they vary from this?

A. They varied in making a new sederunt; if it had been a continuation of the old one there was no necessity of asking me and others for our names to form a new roll, which is invariably the case in opening a new meeting of Synod.

Q. Was this sederunt business, anything more than merely taking the names of those who were present?

A. Yes, and constituting.

Q. Constituting what?

A. Constituting the Synod.

Q. What constituting of the Synod was there?

A. There was the making up of the roll, the reading of portions of Scripture and prayers.

Q. Are you prepared to swear that there was any reading of portions of Scripture at the continuation of the meeting of the 15th of June?

A. There was at the opening.

Q. In the morning?

A. No, but after the others had left.

Q. Are you sure about that?

A. Yes.

Q. As sure of that as you are of the balance of your evidence.

A. Yes.

Q. What was the order of the reading and praying and recording of signatures and other formalities observed at the continued meeting while you were present?

A. I would not be positive whether the opening formalities were first, or the taking down of the roll; but I am of opinion that the roll was taken afterwards.

Q. I understand, Mr. Mullan, that on your being informed by the moderator and clerk that certain formalities had not been complied with, you immediately left?

A. I left shortly afterwards.

Q. How long afterwards?

A. I think about ten minutes after.

Q. Notwithstanding these irregularities you waited just as an onlooker for about ten minutes?

A. Yes.

Q. What time of day was it when you left St. Paul's Church?

A. I could not say exactly.

Q. What time was it when you arrived at the Victoria Skating Rink?

A. I did not examine my watch.

Q. In a case, Mr. Mullan, in which the regular moderator of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland leaves the building, or is unable to attend a meeting of the Synod, is it not the rule in the Church to appoint in his stead for the time the senior ex-moderator present?

A. It has been the custom, and I think still is, for a moderator on his leaving the chair to ask an ex-moderator to take his place.

Q. Will you kindly read over the question carefully again?

A. With regard to a moderator being unable to come to a meeting of Synod, I believe then the members of the Synod would proceed to choose another in his room and stead.

*In the
Superior
Court.*

No. 51.
Deposition
of James
S. Mullan,
witness for
Respondents
filed 2nd
July 1879.
—continued.

RECORD.

—
In the
Superior
Court.
—

No. 51.
Deposition
of James
S. Mullan,
witness for
Respondents
filed 2nd
July 1879.
—continued.

Q. Is it the rule in such cases to choose the senior ex-moderator present?

A. I think not.

Q. You think not?

A. We know no seniors.

Q. You are sure now that you are speaking from the book?

A. With regard to ex-moderators, so far as I am aware, they stand on an equal footing.

Q. You are sure so far as you are aware. Can you undertake to say definitely that the senior ex-moderator has not a preference in the presidency in the case supposed?

A. I think not.

Q. I ask you if you are sure; I do not want a speculative opinion?

A. I am not sure.

Re-Examined.

Q. Mr. Douglas Brymner, who has been spoken of in the cross-examination as being present at the meeting, was not a member of the said Synod at that time, was he?

A. I am not aware that he was.

Q. You spoke of a form being observed at the opening of Synods. Do you mean to say that there is any specified form of prayer?

A. No, sir,

Q. The person conducting the prayer, prays as he chooses?

A. Well, I would not say as he chooses, but to the best of his ability.

In addition to what I have given in the foregoing deposition, I wish to state in explanation of the answer to the question "What constituting of the Synod was there?" That there was also the appointment of a new moderator, it being duly moved and seconded that the Rev. David Watson be, and he is hereby appointed moderator of this Synod; the office he modestly declined; the Rev. Robert Dobie was then unanimously chosen. David Watson was not an ex-moderator and could not be considered as taking the chair in the absence of the moderator.

And further deponent saith not, and this being read over to him he declares it contains the truth.

H. CUTT, Stenographer.

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.

Schedule No. 67.

On this seventh day of July, in the year of our Lord one thousand eight hundred and seventy-nine personally came and appeared John Hugh Mackerras, of the city of Kingston, in the Province of Ontario, professor of classical literature in Queen's College at Kingston, aged forty-seven years, a witness produced on the part of the Respondents, who being duly sworn, deposeth and saith: I am not 40 related, allied or of kin to, or in the employ of any of the parties in this cause.

I am one of the Respondents. I am an ordained minister of the Presbyterian Church of Canada in connection with the Church of Scotland, having been ordained in September, eighteen hundred and fifty-three.

Q. How long have you been a professor in Queen's College, Kingston?

A. Practically fifteen years, but nominally only thirteen.

Q. The Queen's College you have spoken of is a college connected with the said Presbyterian Church of Canada in connection with the Church of Scotland?

A. Yes, and always has been.

Q. It is used for the purpose of training ministers of that Church?

10 A. Yes, and for other purposes.

Q. Since the time you were ordained a clergyman of the said Church have you been in the habit of attending annual meetings of Synods?

A. Regularly.

Q. You never missed any meetings?

A. I never missed an annual meeting; I don't think I missed an hour.

Q. I understand that you have had some official connection with that Synod for a number of years?

A. In eighteen hundred and sixty-five I was appointed clerk of Synod.

Q. How long did you continue to act as such clerk?

20 A. I was clerk of Synod ever since up to eighteen hundred and seventy-five, and joint-clerk of the General Assembly since 1875.

Q. Will you kindly define the duties you had to undertake in your capacity of clerk of such Synod?

A. To record all the proceedings and carry on the correspondence of the Church.

Q. Are you familiar with the procedure of all the church courts connected with the said Church, and the laws?

A. I am.

Q. You have doubtless had a great deal of experience in your capacity of 30 clerk?

A. Yes.

Q. Can you point out the mode in which the commutation of the rights of individual ministers was made with the Government; that is to say, was it made directly between the Government and individual ministers, or otherwise?

A. The Government commuted with individuals through the Synod. The ministers did not come into direct contact with the Government; they acted through Dr. Cook, giving him a power of attorney.

Q. All that appears by the resolutions which are to be found in the minutes of Synod?

40 A. Yes, I have with me the originals of the whole of the minutes of the said Presbyterian Church of Canada in connection with the Church of Scotland from the beginning down to the fifteenth of June, eighteen hundred and seventy-five, the date of the union in question in this cause. Having looked at the three books filed in this cause by the Petitioner, marked "BBB," I say the same contain a correct copy of the said minutes of the Acts and Proceedings of the said Synod, the last page of which ends on the fifteenth of June, eighteen hundred and seventy-five, and is marked on the back of the said page with the letter A

RECORD.

In the
Superior
Court.

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

and the words, "The minutes of eighteen hundred and seventy-five end here." The said page A is wrongly bound up in the said book and should have been inserted after page 40 of the said minutes of June fifteenth, eighteen hundred and seventy-five, but the said page A is a correct and true copy of the original I have here and now exhibit, and it was kept by me as clerk of the said Synod and is duly signed. Said minutes on page A are signed with the signature of the moderator, to wit "W. Snodgrass, D.D., moderator," which signature I now verify; and also the signature, "J. H. Mackerras, Synod clerk," which signature is mine and was written by me at the bottom of said minutes. In the said original minutes, after my signature and the signature of the moderator which I have just referred to, comes the attestation clause as follows: "At Kingston and within Queen's College there, the eighteenth day of October, eighteen hundred and seventy-five years, the committee appointed by the late Synod of the Presbyterian Church of Canada in connection with the Church of Scotland to examine the record of this session, having examined the same, and having found it to be carefully and correctly kept, hereby request the moderator to attest the same. "J. B. Mowat, convener." And then follows: "And the same is hereby attested accordingly, W. Snodgrass, D.D., moderator." The signature, "J. B. Mowat, convener," is the signature to my knowledge, and in the proper handwriting of the convener of the said attesting committee, to wit, the Rev. J. B. Mowat; and the said last-mentioned signature, "W. Snodgrass, D.D., moderator," is the signature and in the handwriting, to my knowledge, of the said moderator, Rev. Dr. Snodgrass. The minutes are attested every year in order to show that the clerk has faithfully transcribed from the scroll the minutes of the previous year.

Q. You are able, then, to state positively, in your official capacity, that the said last page A contains the minutes of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, taken by you on the fifteenth of June, previous to the consummation of the said union?

A. I do.

Q. All the resolutions of the Synod under which the said commutation of the claims of ministers was made are to be found in the Acts and Proceedings of the Synod, marked "BBB"?

A. They are.

Q. And it was under these resolutions the commutation was made?

A. It was.

Q. The amount obtained as the result of the commutation was how much?

A. One hundred and twenty-seven thousand four hundred and forty-eight pounds, five shillings currency.

Q. What was done with that money? To whom was it handed over?

A. It was handed over to Commissioners appointed by the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, to receive it, and by them held in trust, as the minutes show.

Q. How many ministers of the said Church had claims on the proceeds of the Clergy Reserves at the time of commutation, and how many commuted their claims?

A. Seventy-three commuted. I think there was only one who declined to commute.

Q. Can you mention the number of those who were on the roll of Synod at the date of commutation who were not on the roll at the passing of the Imperial Act of eighteen hundred and fifty-three.

A. Eleven.

Q. You are aware, I suppose, that subsequently an Act of Incorporation was passed by the Parliament of Canada to incorporate the Board, Respondents, for the purpose of managing the said fund?

A. There was such an Act obtained.

Q. Do you know at whose instance it was obtained?

10 A. At the instance of the Synod.

Q. Since the passing of the said Act, which is 22 Vic., cap. 66, will you state whether or not the said Synod ever had any controlling power over the fund, and if so, what the nature of the controlling power was?

(Objected to as being illegal, the said funds being only controllable in the manner pointed out in the said statute, 22 Vic., cap. 66, and under the original resolutions of said Synod commuting the same. Objection reserved by parties.)

A. They had full control as shown by the fact that they elected members of the Board every year? every year the Board had to report to the Synod and did report; and by laws passed by the Board, in order to be permanent, had to be sanctioned by the Synod.

Q. Was this with the consent and approval of the Petitioner in this cause, and in fact of the whole Synod?

A. It appears so, because there was never any dissent recorded.

Q. The Petitioner was a member of the said Synod?

A. He was, since eighteen hundred and fifty-three, and took part in its proceedings.

Q. And was in a position to have objected if he chose?

Q. Yes.

Q. Are you aware of any amendment to the said Act incorporating the Board, Respondents, previous to the amendment which was passed by the Quebec Legislature on the twenty-third of February, eighteen hundred and seventy-five?

A. There was an amending Act.

Q. Do you remember what year?

A. It was assented to April fifth, eighteen hundred and sixty-nine.

Q. Was the Rev. Mr. Dobie a member of Synod at that time?

A. He was.

Q. Are you aware whether or not the Board, Respondents, made any report to the Synod as to the obtaining of the said amending Act?

A. They did so report.

40 Q. Did the Rev. Mr. Dobie make any objection?

A. The report was referred by the Synod to a Committee. Mr. Dobie was a member of that Committee, and no objection was ever offered by him to the obtaining of this Act.

Q. Will you kindly point out the report in the minutes of Synod which refers to that amending Act of eighteen hundred and sixty-nine?

A. It is to be found in the said minutes for the year eighteen hundred and

RECORD.

In the
Superior
Court.

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.

—continued.

RECORD. sixty-nine, under Appendix A, in the Report of the 'Temporalities' Board. Said Appendix is not paged, but it comes after page 56 of the said minutes of said year. The clause is as follows: "During last session an Act of Parliament was obtained from the Legislature of the Province of Quebec, empowering the Board to invest their surplus funds in mortgages." The report as a whole was referred to a Committee of which Mr. Dobie was a member, and hence he must have been cognizant of that paragraph. The report was adopted by the said Synod.

*In the
Superior
Court.*

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

Q. Before the union of Churches which is in question in this cause and which took place in June, eighteen hundred and seventy-five, were the Acts of 10 the Local Legislatures, to wit, of the Legislatures of Quebec and Ontario, which are set forth in the pleadings in this cause, submitted to the said Synod—I mean the said Act to amend the Board, Respondents, being 38 Vic. chap. 64, passed by the Legislature of the Province of Quebec, and the Act 38 Vic. chap. 75, passed by the Legislature of the Province of Ontario, and also the Act passed by the Legislature of the Province of Quebec being 38 Vic. chap. 62?

A. They were submitted.

Q. Were they discussed?

A. They were read clause by clause and were approved of.

(Petitioner here objects to this evidence inasmuch as the Acts and Proceed- 20 ings of Synod filed in this cause are evidence of what took place in the Synod and the witness cannot give mere verbal testimony as to the proceedings of said Synod. Objection reserved by consent of parties.)

Q. I supposed the minutes of Synod show that said Acts were submitted?

A. They do.

Q. I think these acts were obtained at the suggestion of said Synod, were they not?

A. They were.

Q. A large Committee was appointed by the Synod to obtain such acts?

A. I think a large Committee was appointed of which Dr. Snodgrass was 30 convener. At page 44 of the minutes of June, eighteen hundred and seventy-four, I see a Committee was appointed "to consider all the matters on which legislation may be required and to take all competent measures for obtaining such legislation, with power, if need be, to employ counsel in reference thereto." That Committee reported to the Synod of November, eighteen hundred and seventy-four, as is shown at pages 19 and 20 of minutes for November of that year: "The draft Acts were then read clause by clause, and with certain amendments which were noted by Mr. Croil for the guidance of the committee, were approved of," and the thanks of Synod were then given to the committee on Legislation. Then there was a committee appointed to watch over legislation 40 while it was going through the Legislature. The Committee on Legislation reported to the Synod, as is shown at page 28, minutes of Synod for June, eighteen hundred and seventy-five, that the necessary legislation in regard to church and college property had been secured and in consequence the Synod resolved to proceed to the consummation of said union.

Q. You were present, I believe, in your capacity of clerk at the meeting of Synod on the fifteenth of June, eighteen hundred and seventy-five?

A. I was.

Q. Will you point out in the minutes of Synod the resolution which was passed in reference to said union and to the adjournment of the Synod to consummate it?

A. The minute is found on page 35 of the minutes of said Synod of June, eighteen hundred and seventy-five.

Q. Will you kindly state how many members of the Synod present on that occasion dissented from the motion which was carried to consummate the union and to adjourn on the following day to the Victoria Hall or Skating Rink for the purpose of consummating said union?

10 A. Eight ministers and two elders.

Q. How many members of Synod voted for the resolution?

A. I could not say all the others who were present. It was carried by an overwhelming majority.

Q. Will you give the names of the ministers who dissented?

A. Mr. Dobie the Petitioner, Mr. Simpson, Mr. Robert Burnet, David Watson, J. S. Mullan, Thomas McPherson, John Davidson, John McDonald, ministers; and two elders, Wm. McMillan and Roderick McCrimmon.

Q. Can you tell me what ministers or congregations Mr. McMillan and Mr. McCrimmon represented?

20 A. Mr. McMillan represented London, and Mr. McCrimmon, Lancaster. The Mr. McPherson whom I have referred to was Mr. McCrimmon's minister, and and they both represented the same congregation.

Q. Why was the adjournment made to the Victoria Skating Rink of the Synod on the fifteenth of June?

A. Because none of the churches would hold the assembled body after it had united, for want of space.

Q. On the fifteenth of June, when, as you state, the Synod adjourned to the said Victoria Hall or Skating Rink, to consummate the said union, did you proceed with it in your capacity of clerk?

30 A. I did.

Q. How long did the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland remain there legally constituted as a Synod before the said union was consummated?

(Objected to by the said Petitioner on the ground that it is not competent for the witness to state as to the legality or illegality of the said Synod on the said occasion. Objection reserved by the parties).

A. I should say about an hour, at least.

40 Q. Do I understand you to say that the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland continued its session in the Victoria Hall for some time after adjourning there before the union was consummated?

A. Yes, it constituted when it went there, and it remained there for, I should say, at least about an hour before the moderators had appended their signatures and formed the union. All the rolls of the different bodies had to be called, which was a very tedious operation. I called the roll of my Synod.

Q. Did the said Rev. J. S. Mullan whom you have mentioned as being one of those who dissented, remain behind in St. Paul's Church at the time the Synod

RECORD.

In the
Superior
Court.

No. 52.

Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

*In order to make up roll of the
Assembly*

RECORD. left to consummate the said union, or did he go to the Victoria Hall and take part in the union in answer to his name?

*In the
Superior
Court.*

No. 52.
Deposition
of Rev.

John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

A. I know the said J. S. Mullan appeared in the said Victoria Hall and answered to his name when it was called, because I was specially requested to make it very distinct.

Q. He has been a minister connected with the Presbyterian Church in Canada since?

A. Yes.

Q. Were you present when the articles of union, namely, the preamble and basis of union and the resolutions adopted in connection therewith, were signed in the Victoria Hall by the moderators of the four Churches which united on that occasion, namely, on the fifteenth of June, eighteen hundred and seventy-five, to form the Presbyterian Church in Canada?

A. I was present.

Q. Did you see the documents signed?

A. I did.

Q. Have you the originals of the said articles and preamble, basis of union, and resolutions, here?

A. I have, and now produce them. I identify the signature appended to the bottom thereof, "W. Snodgrass, D.D." and the words thereafter, "Principal of Queen's University College, moderator of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland," as being the signature, and the whole of the said quoted words in the proper handwriting of the said Dr. Wm. Snodgrass, who was the moderator at the time of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland. I saw him sign it and write all these words. The next signature appended at the bottom thereof is, "Wm. Caven, D.D." and the words Principal of Knox College, and moderator of the General Assembly of the Canada Presbyterian Church," and I say that the said signature "Wm. Caven," and the said quoted words are the signature and written by the said Wm. Caven, who was the moderator of the General Assembly of the Canada Presbyterian Church at the time, which was one of the said Churches which so united. I identify next the signature at the bottom thereof of "Peter G. MacGregor," and the words, "moderator of the Synod of the Lower Provinces of B. N. America"; the whole of these words are written by Peter G. MacGregor who was then the moderator of the Synod of one of the said Churches which formed the said union, called the "Synod of the Lower Provinces of British North America." I identify next the signature "George Munro Grant," written at the bottom of said document, and the words "moderator of the Synod of the Maritime Provinces in connection with the Church of Scotland." The same is the signature, and these quoted words were written by George Munro Grant who was then the moderator of the Synod of one of the said uniting Churches called the "Synod of the Maritime Provinces in connection with the Church of Scotland."

Q. This document is the original of the preamble, basis of union, and the resolutions attached thereto?

A. Yes, that is the original document on which the said four Churches united. A correct printed copy of the said preamble, basis, and resolutions, is to

be found at pages 4, 5, and 6 of the minutes of the First General Assembly of the Presbyterian Church in Canada, filed in this cause as Petitioner's Exhibit "LL."

Q. How long has the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland been in existence, that is to say, when was its first Synod held?

A. In eighteen hundred and thirty-one.

Q. Do you know when said Synod was first so called, and how it obtained the name of the Presbyterian Church of Canada in connection with the Church of Scotland, that is to say who gave it its name?

10 A. It was the Synod. On the seventh of June, eighteen hundred and thirty-one, it was moved, seconded and carried unanimously that "This Convention of ministers and elders in connection with the Church of Scotland, representing their respective congregations, do now form themselves into a Synod to be called the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, leaving it to the Venerable the General Assembly to determine the particular nature of that connection which shall subsist between this Synod and the General Assembly of the Church of Scotland." I now produce the said minute marked Respondents' Exhibits 3,3. The said minute is to be found on page 4 of the said book.

20 Q. Was the Presbyterian Church of Canada in connection with the Church of Scotland a body corporate and politic, or was it an independent, voluntary association?

A. It was never a body corporate; it was an independent voluntary association. The propriety of getting an act was frequently discussed, but it was never incorporated.

Q. How was the Presbyterian Church of Canada in connection with the Church of Scotland governed?

30 A. The question put to ministers at their ordination shows that. It was governed by Kirk-sessions, Presbyteries, Synods and General Assemblies. The said questions for ordination will be found at page 46 of the minutes of said Synod for the year eighteen hundred and seventy-two. Similar provisions as to the government of said Church by Kirk-sessions, Presbyteries, Synods, and General Assemblies, are to be found in the minutes of said Synod for the year eighteen hundred and sixty-seven, page 31 thereof. But these questions mentioned on the said last quoted page were subsequently changed in eighteen hundred and seventy-two and those I first mentioned substituted for those of eighteen hundred and sixty-seven.

Q. In the Presbyterian Church of Canada in connection with the Church of Scotland there was no General Assembly?

40 A. No, there was not. The Synod was the supreme court. We did not think we were sufficiently numerous to form a General Assembly.

Q. Would you explain briefly what Kirk-sessions, Presbyteries, and Synods are?

A. The Kirk-session is composed of the minister and certain persons called elders, chosen to look after the spiritual interests of the congregation. Presbyteries are composed of the ministers of a certain district with a lay representative from each Presbyterial charge, I mean one of those elders I have spoken of. The

RECORD.

In the
Superior
Court.

No. 52.

Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

RECORD. Synod is composed of the members of the Presbyteries. The Synod roll is made up of Presbytery rolls.

*In the
Superior
Court.*

(Petitioner objects to the witness stating the constitution of the different courts, the same being fixed by laws of the Synod. Objection reserved by parties).

No 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

Q. How does the Synod govern the Church?

(Objected to as illegal, there being a written constitution, and as to the powers and authority of Synods the witness is not competent to state the same verbally except from the minutes of the said Church. Objection reserved by parties).

A. They discuss matters, vote upon them, and the majority carries.

Q. Can you tell me what constitutes a quorum of the said Synod, and point out the law regulating the same?

A. Fifteen, of whom at least eight must be ministers. The law regulating the same is to be found in the said minutes of the year eighteen hundred and sixty-eight, page 49, section 1, sub-section 6, and reads as follows: "To constitute a quorum of Synod there must be present not fewer than fifteen members of whom at least eight must be ministers."

Q. Was the Rev. Robert Dobie, Petitioner, a member of Synod at the time when the said law with reference to a quorum was framed and adopted?

A. He was moderator of the said Synod.

Q. Was that law ever repealed?

A. Never.

Q. Was it always acted on during the time you were clerk?

A. Strictly. We had generally three sederunts in the day and we never opened any one until we were sure we had fifteen; and on the night before the last day when we were fearful that we might be left without a quorum, we pledged fifteen members to be sure and be there.

Q. What do you call the last day?

A. We generally knew the night before if we would be able to close next day and the house was getting thin, and in order not to be left without a quorum we pledged a certain number to attend; that was done repeatedly, and we never went on without a quorum.

Q. Will you be kind enough to state the meaning of the words "in connection with the Church of Scotland," which appear in the name of the said Presbyterian Church of Canada in connection with the Church of Scotland, and specify also fully what was the nature of such connection, referring to whatever authority you have for your statements?

(Objected to as illegal. Objection reserved by parties).

A. They are set forth in the Act of Independence found on pages 15 and 40 16 of the minutes of the Synod held in September, eighteen hundred and forty-four.

Q. What was this Act of Independence?

(Objected to as illegal, inasmuch as the said Act speaks for itself. Objection reserved by the parties.)

A. An Act that was passed by the said Synod in order to assert its true position and to explain the meaning of the words in its title, "in connection with the Church of Scotland."

Q. Is it not true that every minister in connection with the said Church thereafter, at the time of his induction to a charge, was required by the law of the Church to adhere to or give his assent to the said Declaration of Independence?

A. Every minister or probationer was obliged to assent to it.

Q. Can you show the law?

A. It is in the close of the Act, on the 16th page. The said Act itself declares so, and it is further declared that this supreme and free jurisdiction is a fundamental and essential part of the constitution of this Synod.

Q. This Act of Independence was made a fundamental part of the constitution of the said Church, was it not?

A. It was; it was sent down to Presbyteries under the Barrier Act; and we find on page 25 of the minutes of Synod of July, eighteen hundred and forty-five, that no Presbytery objected to the said Act, and accordingly the Synod passed the said Act into a standing law of the Church, and it has never been repealed.

Q. Did the said Church of Scotland in Scotland, on its part, recognize the said independent and free jurisdiction of the Presbyterian Church of Canada in connection with the Church of Scotland, and if so, please show your authority for such statement?

(Objected to as leading and suggestive. Objection reserved by the parties.)

A. Yes, as is shown at page 9 of the minutes of Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland for September, eighteen hundred and forty-four, where the following words occur in a letter from the Colonial Committee of the General Assembly of the Church of Scotland to the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland: "The Church of Scotland has never claimed any authority nor exercised any control over your Synod; neither has she ever possessed or desired to possess the right of any such interference. Her ambition and her efforts have been limited to the cultivation of brotherly affection and the rendering of pecuniary aid to those who had many claims on her regard."

Q. To your knowledge has the attitude of the Church of Scotland in Scotland towards the Presbyterian Church of Canada in connection with the Church of Scotland been just as defined in the words which you have quoted in answer to the last question?

A. It has been.

Q. Can you give any further information as to the whole question of the relations of the Church of Scotland in Scotland to the said Presbyterian Church of Canada in connection with the Church of Scotland?

A. What is called the Declaratory Enactment, passed by the General Assembly of the Church of Scotland, and appearing in the minutes of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, at pages 42 and 43 of Synod minutes of eighteen hundred and thirty-three, in reply to the application of the said Synod found on page 4 of the minutes, June seventh, eighteen hundred and thirty-one, shows this, that the General Assembly of the Church of Scotland simply undertook to give advice

RECORD.

In the
Superior
Court.

No. 52.

Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

RECORD. on any question with regard to which said Synod may choose to consult the Church of Scotland, and afford said Synod such aid as it may be in the power of the Colonial Committee of the General Assembly of the Church of Scotland, to give in all matters affecting their rights and interests. This Declaratory Enactment was declared by the said Synod to form part of the Constitution of the Presbyterian Church of Canada in connection with the Church of Scotland, as appears at page 43 of the minutes of said Synod, eighteen hundred and thirty-three. The deliverance passed by the General Assembly of the Church of Scotland in reference to said union, or the union at issue in this matter, establishes the independence of the Presbyterian Church of Canada in connection with the Church of Scotland. 10

In the
Superior
Court.

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

Q. Would you kindly refer to such deliverance?

A. I now hold in my hand and exhibit "The Principal Acts of the General Assembly of the Church of Scotland, convened at Edinburgh, eighteen hundred and seventy-two." The following occurs in a deliverance of the said General Assembly of the Church of Scotland with reference to the reception of the Rev. Dr. Jenkins, of Montreal, and his address contained in said Acts, page 47: "The General Assembly feel assured that the great work before them, to wit, (the Presbyterian Church of Canada in connection with the Church of Scotland,) in a great country will be carried on by God's help for the future as it has been in the past; and that no union of the several Presbyterian bodies in Canada will be agreed to without their being all fully satisfied that the great object of extending the benefits of religion will by that union be even more vigorously and effectively carried out than now." Next I hold in my hand and show "The Principal Acts and Proceedings of the General Assembly of the Church of Scotland," in Scotland, for eighteen hundred and seventy-five. On pages 44 and 45 thereof the following words occur with reference to the said Presbyterian Church of Canada in connection with the Church of Scotland and the proposed union which is in question in this cause: "The General Assembly while receiving with profound concern and regret the intimation that on the subject of an incorporating union of Presbyterian Churches, threatened division in the Canadian Synods is endangering the cordiality of that co-operation which is so essential to the success of the work of the Church in all lands, the General Assembly claim no title to review the proceedings which have issued in that result. As to differing views of duty involved in it the Assembly express no opinion, but the General Assembly while continuing to recognize all old relations with the brethren in Canada are quite prepared to declare after consideration of the terms of the proposed union as laid before their Committees' Report, as they hereby do declare, that there is nothing in the said terms of union to prevent the Assembly from cordially wishing God-speed in their future labors for the Lord to brethren who propose to accept union on that basis, or from co-operating with them in any way that may be found possible in the new state of things in promoting the religious interests of Scottish Presbyterians in the Canadian Dominion." 20 30 40

Q. What basis and terms of union are referred to in the extract you just read?

A. The basis and terms of union on which the four negotiating Churches united and formed the Presbyterian Church in Canada.

Q. That is the basis which you have already proved to-day ?

- A. Yes. I next refer to "The Principal Acts of the General Assembly of the Church of Scotland," in Scotland, for the year eighteen hundred and seventy-six, which I now hold in my hand. At page 49 appears the following, which contains the deliverance of the General Assembly of the Church of Scotland on the Report of the Colonial Committee of the said General Assembly: "The Assembly have heard with much interest that the union of Presbyterians in the Dominion of Canada has at length taken place. The terms on which this union has been effected having been brought under the consideration of the last General Assembly and that Assembly having declared that there is nothing in those terms to prevent the Assembly from wishing God-speed in their future labours for the Lord to brethren who propose to accept union on that basis, or from co-operating with them in any way that may be found possible in the new state of things, the General Assembly resolve to record, and through the respected deputies from Canada to convey to the brethren in the united Church of the Dominion, an expression of their earnest prayer that God may be pleased to hallow and bless the union and to make it the means of promoting peace as well as all the other interests of religion among the people. The Assembly at the same time regret to learn that the threatened division in the Canadian Synod, of which intimation was given in the report to the last General Assembly, has to some extent become a reality. As to differing views of duty in regard to accepting or rejecting the union, this Assembly, like all former Assemblies, express no opinion; but being persuaded that those brethren who have declined to enter the united Church, not less than those who have accepted union, have acted under the strongest sense of duty, the Assembly assure them of their continued regard and desire for their prosperity and usefulness. And while the Assembly will not cease to pray and use such means as may be within their power, and entreat their brethren in Canada to unite in the same prayers and efforts, that all heats may be allayed and any remaining division may be healed, they will cordially continue to co-operate in any possible way with both parties in promoting the religious interests of their colonial brethren. The General Assembly having learned from the deputies that an impression exists in Canada that the Church of Scotland regards the action of those connected with her in Canada in forming the union now consummated as an indication of disloyalty to the Parent Church, assure the deputies that they entertain no such idea, but on the contrary give full credit to the representations which they have received from the brethren on that subject."

Q. Since the passing of said deliverance which you have just quoted by the General Assembly of the Church in Scotland since the consummation of the said union, has the attitude of the said Church of Scotland, or of its General Assembly, changed, and have they co-operated in the new state of things with reference to said United Church, the Presbyterian Church in Canada, just as they did before the said union ?

A. Their attitude has not changed and they have co-operated in the same way as before. For many years before the union I was Convener of the Committee on Correspondence with the Colonial Committee, and I still correspond with them. I have signed and countersigned receipts just in the same capacity

RECORD.

In the
Superior
Court.

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

RECORD. since the union as before the union, namely, as Convener of the Correspondence Committee. That is one way. They continue to send me money as they formerly did—grants of money for the same purposes for which they gave before the union. They have also sent a deputy in the person of the Rev. George W. Sprott. He appeared before the General Assembly at its recent meeting in Ottawa, and addressed the Assembly, among other things stating that the Church of Scotland wished that the union had been complete. I was present and heard him.

*In the
Superior
Court.*
No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

Q. I see that it is stated in what is called the Act of Independence of eighteen hundred and forty-four that you have referred to, that the words in the name of the said Church, to wit, "in connection with the Church of Scotland," denote merely the connection of origin, identity of standards and ministerial and church communion with the said Church of Scotland in Scotland; allow me to ask you if any change has occurred, or whether the standards of ministerial and church communion in the united Church are not the same as before?

A. Quite the same, I may say also the Presbyterian Church in Canada, by its polity, allows its congregations to call ministers in charges in the Church of Scotland, or ministers or missionaries who have been commissioned by the said Church of Scotland.

Q. Is it true, as stated by Mr. Brymner, a witness examined in this case on the part of the Petitioner, that by the preamble and basis of union which you have already referred to, the whole Confession of Faith, which was the Confession of Faith of the Presbyterian Church of Canada in connection with the Church of Scotland, is not adopted by the Presbyterian Church in Canada?

A. It is adopted in its fullness, as appears by the said basis of union, the last clause of the second article of the basis of union being a mere explanatory note. "It being distinctly understood that nothing contained in the aforesaid Confession or Catechisms regarding the power and duty of the civil magistrate shall be held to sanction any principles or views inconsistent with full liberty of conscience in matters of religion."

Q. Was there anything different from that last clause held under the former régime, that is to say in the Presbyterian Church of Canada in connection with the Church of Scotland? was it ever held that there was anything inconsistent with liberty of conscience?

A. The Presbyterian Church of Canada in connection with the Church of Scotland have always entertained the view expressed in that explanatory note.

Q. What relations did ministers in Canada, ordained and inducted by the Presbyterian Church of Canada in connection with the Church of Scotland, hold with reference to the Church of Scotland in Scotland, and how were ministers dealt with upon applying to be received into the Church of Scotland in Scotland?

A. If they applied for admission to the Church of Scotland they were treated as ministers of dissenting Churches. At the time of the union in June, eighteen hundred and seventy-five, of the one hundred and seventeen ministers on the roll of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, sixty-seven were not ministers of the Church of Scotland in Scotland. I quote from the principal Acts of the General Assembly of the Church of Scotland in Scotland for eighteen hundred

- and sixty-six, which I now hold in my hand and produce, and which shows on page 61 thereof that Mr. John Darroch, a minister of the Presbyterian Church of Canada in connection with the Church of Scotland, was remitted to the Presbytery of Glasgow to be taken on trial, and the following words appear in the said minutes with reference to him: "The Assembly called for the Report of the Committee on applications of dissenting ministers and licentiates for admission to the Church.....The Assembly approved of the Report and in terms thereof authorized the Presbytery of Glasgow to take on trial Mr. John Darroch, formerly a minister of the Presbyterian Church of Canada in connection with the Church of Scotland, and having satisfied themselves of his qualifications, to admit him as a licentiate of the Church; and further authorize the Presbytery of Glasgow to take on trial Mr. Smith Hutchison, formerly an ordained minister of the English Baptist Church, and if they are satisfied after such examination as to his qualifications and attainments, then to receive him as a licentiate of this Church." This shows that a minister of the Presbyterian Church of Canada in connection with the Church of Scotland was placed on the same footing as a minister of the English Baptist Church, and from being an ordained minister of the Presbyterian Church of Canada in connection with the Church of Scotland, was treated as a student of divinity applying for license. Then there are other cases of a later date. I could produce many of them; I will produce one or two. In "The Principal Acts of the General Assembly of the Church of Scotland" for eighteen hundred and seventy-five, page 49, I quote another instance: "That an application of the Rev. Robert Laing, B.A., Montreal for admission to the Church of Scotland be remitted to the Committee on the admission of dissenting ministers to the Church." At the said session of the General Assembly several ministers and licentiates of dissenting Churches were received, and the finding in regard to these was similar to that in regard to Rev. Thomas Gillespie Smith and the Rev. Robert Laing, ministers of the Presbyterian Church of Canada in connection with the Church of Scotland. I could refer to other instances, but that was the practice of the Church of Scotland.
- Q. According to the law and custom of the Church had the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland a right to adjourn the session of Synod from one place to another?
- (Objected as illegal. Objection reserved by the parties.)
- A. According to consuetudinary law or practice the Synod had a right to adjourn from place to place, but they could not meet again without constituting.
- Q. What do you call constituting?
- A. Opening the meeting with prayer. Now that practice you will find anywhere in the minutes of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, or the Acts and Proceedings of the General Assembly of the Church of Scotland, in Scotland. If they adjourned for an hour or two they would have to constitute when they met.
- Q. After the adjournment of said Synod to the Victoria Hall, or Skating Rink, did the said Synod constitute when it met in the Victoria Hall?
- A. They had to constitute and they did constitute.
- Q. Was it with prayer?
- A. Certainly with prayer.

RECORD.

In the
Superior
Court.No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

Q. Did ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, leaving their charges here and settling in Scotland, retain their allowances, or the reverse, from the Temporalities' Board.

A. They did not retain their allowances, as is shown in the case of the Rev. John Whyte, now of Queen's Ferry, and the Rev. John Cameron, now of Dunoon. I mention these two cases because they occurred before the union; and there have been several others since.

Q. What was implied in the custom which prevailed in the Presbyterian Church of Canada in connection with the Church of Scotland of asking a stranger, not a member of Synod, to sit and deliberate in the Synod?

A. It was a mere matter of courtesy. He had no right to vote. A corresponding member from another Synod was a member and had all the privileges of a member, and could vote. The only exception was in the case of the Rev George M. Grant, who was virtually a corresponding member from the Synod of Nova Scotia, although he had not a commission. He took part in moving a motion containing a vote of thanks for hospitality received by the Synod.

Q. What was the law of the Presbyterian Church of Canada in connection with the Church of Scotland with reference to the insertion of Presbytery rolls in the minutes of Synod?

(Objected to as illegal. Objection reserved by consent of parties.)

A. The invariable practice for forty years before the union was to insert the Presbytery rolls as constituting the Synod roll. I quote from the book of Polity, minutes of Synod, eighteen hundred and sixty-eight, page 49, paragraph 3, under "Synod": "The roll of Synod consists of the attested rolls of the several Presbyteries. The rolls of Presbyteries are, in making up the Synod roll, placed in the order of seniority in the formation of the Presbyteries."

Q. These rolls should show the different congregations in connection with the Synod, should they not?

A. Yes, and ministers and representative elders.

Q. Are not such rolls always called for?

A. Certainly; we cannot constitute a Synod roll until we have these, and they are always read over?

Q. Reference has been made by a witness examined in this cause to certain parties who left the Presbyterian Church of Canada in connection with the Church of Scotland in the year eighteen hundred and forty-four; have you a knowledge of the circumstances of such departure, and will you state whether those who then seceded claimed, after leaving, to be the Presbyterian Church of Canada in connection with the Church of Scotland?

A. Well, I have a knowledge from my reading the records of the Churches—I was a boy at the time—and they did not claim to be the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. You have seen the Digest of the Minutes of the Presbyterian Church of Canada, which is filed in this case, marked "LL"?

A. Yes.

Q. From looking at that, can you tell me whether they claimed to be such Church or whether they did not actually secede and declare they had no connection with the Presbyterian Church of Canada in connection with the Church of Scotland after they had left it?

A. Page 5 of "LL" shows that they could no longer hold office in the Presbyterian Church of Canada in connection with the Church of Scotland. They did not claim to be the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. Will you look at pages 411 and 412 of the said Digest "LL," and state why the said ministers who had left the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland were refused their petition for a share of the proceeds of the Clergy Reserves which had been promised to the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland?

A. This was the answer from the Government, because of the new position in which the Synod stood, that is, that they had seceded from the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. Does not the said Digest of Minutes of the Presbyterian Church of Canada show that subsequently the said Presbyterian Church of Canada, which was formed by the said seceders, was offered a share of the proceeds of the said Clergy Reserves?

A. Yes, as appears at page 413, and they declined to receive any share.

Q. Are you aware whether or not other branches of the Protestant clergy received any share of the proceeds of the said Clergy Reserves besides the Church of England and the Presbyterian Church of Canada in connection with the Church of Scotland?

A. Three Presbyterian ministers, Messrs. Smart, Boyd and Rogers, received some, and also the Wesleyan Methodist Church.

Q. Who were Messrs. Smart, Boyd and Rogers?

A. They were members of the old United Synod of Upper Canada, and they received as their commutation two thousand two hundred and forty pounds and eleven shillings currency, that is, the three ministers aforesaid. The Wesleyan Methodist body received as their commutation nine thousand seven hundred and sixty-eight pounds, eleven shillings.

Q. So that is was simply because the said several ministers who commuted their claims constituted instances of a Protestant clergy that they received any share of the said Clergy Reserve fund, or were allowed to commute under the Act?

A. Yes, as a Protestant clergy, to whom the faith of the Crown was pledged.

Q. What was the interest in the fund of the Rev. Robert Dobie at the time of the union, and how much was he entitled to per annum as his allowance?

A. He had an interest during life, or incumbency. He had a right during life, or incumbency, to one hundred and twelve pounds, ten shillings, a year from the Temporalities Fund. That is shown in the minutes of Synod of the Presbyterian Church of Canada in connection with the Church of Scotland for eighteen hundred and fifty-six, page 23. I quote: "The Synod further agreed, and declared that the guaranteed salary of one hundred and twelve pounds, ten shillings, shall, upon the death of any one of the recipients, revert to the 'General Fund.'"

Q. This claim of one hundred and twelve pounds, ten shillings, has been

RECORD.

In the
Superior
Court.

No. 52.
Deposition
of Rev.
John Hugh
MacKerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

RECORD. guaranteed to Mr. Dobie during life by the amending Acts of the Local Legislatures which you have already referred to?

*In the
Superior
Court.*

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

A. It has been so guaranteed.

Q. Notwithstanding the fact that he left the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland on the fifteenth of June, eighteen hundred and seventy-five?

A. Notwithstanding the fact that he seceded from the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland on the fifteenth of June, eighteen hundred and seventy-five.

Q. Was it not at the suggestion of the Synod itself that Mr. Dobie's stipend was guaranteed to him during life, whether he remained in the union or out of it?

A. The Synod of its own motion, provided that the allowances from the Temporalities Fund should be as secure after union as before, whether the ministers remained in or out of the union.

Q. Can you state how many congregations there were belonging to the Presbyterian Church of Canada in connection with the Church of Scotland and reporting to its Synod in June, eighteen hundred and seventy-five, the date of the said union?

A. There were one hundred and twelve settled charges and twenty-two vacancies, making in all one hundred and thirty-four. While there were one hundred and twelve settled charges there were one hundred and seventeen ministers, including the professors of Queen's College, of whom there were five.

Q. Can you state how many of these congregations remained out of the union?

A. Some remained out as a whole, others in part. There were eight, at any rate. I do not include the case of a minority of a congregation, such as Williamstown, dissenting from the vote of the majority of the congregation to enter into the union.

Q. Why not?

A. Because the majority of a congregation decides. According to the Acts of Parliament the majority at a regular meeting were to decide whether to remain in the union or not, and I have given these as to my own knowledge, I exclude cases where there are minorities, and I have given as a specimen Williamstown. The names of such congregations which did not go into the said union are as follows: Milton, Thorah, Beechridge, Lochiel; as far as I understand these are out as a whole. Then there are others that have been in law, or at least have gone out by a majority, for instance Lancaster, and St. Andrew's, Montreal. Williamsburg is in law just now as to whether they are in or out of the union. I believe Cote St. George is in the same position. Mr. Burnet had the minority of the London congregation. Eldon is still in law.

Q. How many ministers, which were on the roll of the Presbyterian Church of Canada in connection with the Church of Scotland at the time of the said union, have not joined the said united church?

A. There were ten.

The further examination of this witness is adjourned.

And on this eighth day of July, of the year aforesaid, the said witness, John Hugh Mackerras, re-appeared and continued his evidence as follows:—

Q. Then do I understand you to say that in the Province of Quebec the only ministers who refused to enter into the said union were the Rev. Gavin Lang, of Montreal, the Rev. John McDonald, of Beechridge, and the Rev. Wm. Simpson, of Lachine?

A. These were the only ones.

Q. Had the Rev. Gavin Lang, prior to the fifteenth of June, eighteen hundred and seventy-five, any claims on the said Temporalities' Fund? did he ever receive any moneys therefrom, or was he entitled to receive any?

A. He had no claim; he had only a prospective interest. He had no present claim.

Q. That is, you can say that if he waited long enough for the men who were on the list to die away, he would get placed on the list?

A. Certainly.

Q. He was not one of the commuting ministers?

A. He was not.

Q. Was the Rev. John McDonald of Beechridge a commuting minister?

A. No.

Q. Then the Rev. Wm. Simpson was the only one of the three in the Province of Quebec who remained out of the union, who was an original commuting minister and received of the proceeds of the said Clergy Reserves?

A. Yes.

Q. Did the congregation of the Rev. Mr. Simpson, of Lachine, remain out of the union with him?

A. If they did remain out it was only a very short time. They are in the union now.

Q. What became of the Rev. Mr Simpson? is he at Lachine still?

A. I understand he is a retired minister without a congregation.

Q. Can you state in the Province of Ontario how many ministers with their entire congregations remained out of the union?

A. Three, as far as my knowledge goes, remained out with all their congregations.

Q. How many in Ontario remained out of the union whose congregations went into the union by vote of the majority?

A. Two, as far as I can recollect.

Q. Can you give me the names of those ministers you have just specified in Ontario who did not join in the said union?

A. The Rev. Robert Dobie, the Petitioner, the Rev. David Watson, Thorah, and, as far as I can understand, Rev. Neil Brodie of Lochiel. These are the three, as I understand, that remained out without their congregations breaking. The Rev. Robert Burnet remained out and his congregation went bodily into the union. A majority of the Rev. Peter Watson's congregation went into the union, as was proved in the lawsuit. There are the cases of Eldon and North Williamsburg which, I understand, are in litigation in Ontario, and I cannot say exactly how they stand. There is the congregation also of Côte St. George, in Lower Canada, which, I believe, is also in law as to whether it is in or out of the union.

RECORD.

In the
Superior
Court.

No. 52.

Deposition
of Rev.

John Hugh

Mackerras,

produced by

Respondents

filed 7th

July 1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

Q. Of these names that you have mentioned, Dobie, Watson, Brodie, Burnet and Watson, how many are original commuting ministers who commuted their said claims?

A. Five.

Q. Which are they?

A. The Rev. Robert Dobie, the Rev. Robert Burnet, and the Rev. David Watson, in Ontario. The Rev. John Davidson is also an original commuting minister, and the Rev. Thomas McPherson of Lancaster.

Q. Will you be kind enough to state how many out of the original seventy-three commuting ministers, survive?

A. Thirty.

Q. And out of these thirty it appears from what you have stated that only six have refused to enter the said union?

A. There are only six.

Q. Is there anyone to your knowledge except the Petitioner, Dobie, who has a lawsuit now pending about the said 'Temporalities' Fund, or the administration of said Board?

A. None, as far as I am aware.

Q. Previous to the union in eighteen hundred and seventy-five, did the said Presbyterian Church of Canada in connection with the Church of Scotland embrace more than, or extend over more than, the two Provinces of Ontario and Quebec?

A. No, it was limited to those two Provinces.

Q. So that all the ministers in active service in the said Church prior to the fifteenth of June, eighteen hundred and seventy-five, and all the congregations connected therewith, must have been in either of those two Provinces, and were, as a matter of fact?

A. They were.

Q. Now, as to the present members of the Board, Respondents, how many of its members have refused to enter into the union?

A. Two, the Rev. Gavin Lang and Sir Hugh Allan; they both live in the city of Montreal, in the Province of Quebec.

Q. Was there any congregation appearing on the roll of Synod in connection with the Church at Collingwood, previous to the fifteenth of June, eighteen hundred and seventy-five?

A. There was not.

Q. Did the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland exercise any control over any other fund or property besides that of the Board, Respondents?

A. They did.

Q. Specify, and answer fully?

A. They exercised control over the Ministers' Widows' and Orphans' Fund of the said Church, and also in regard to the sale of congregational property. I cannot say anything about the law of Lower Canada, but in Upper Canada there were several congregations that wished to sell a part of their property or the whole of it, and applied to the Synod for leave, and the leave craved was granted. I can give you two instances, one from page 25 of the minutes of the said Synod

10

30

40

for eighteen hundred and fifty-seven, when permission was given to the congregation of St. Andrew's Church, Darlington, to sell an acre and a quarter of land and devote the proceeds to the erection of a manse. There are other cases, and here is one. On page 40 of the minutes of the said Synod of eighteen hundred and seventy-one, similar leave was granted to the congregation of East Williams. The Synod claimed to deal not merely with spiritualities but with temporalities; and the Synod adopted a model constitution for congregations, and also a model deed for holding the property of congregations.

Q. Will you be kind enough to point out in the minutes of Synod the model constitution which you say it adopted with reference to congregations; did that model constitution refer to the holding of property in any way?

A. It was a model constitution for congregations for regulating all their affairs, including the holding of property and the appointment of trustees. On page 13 of the minutes of the said Synod for eighteen hundred and forty-seven is found the first clause which reads as follows: The property of the Church and of all real estate belonging to, or that may hereafter be acquired, by this congregation, shall be invested in trustees, &c., showing what they had to do.

Q. What other function did the said Synod exercise?

A. It had full legislative power; it was the supreme court—there was no appeal beyond; in fact it was just the voice of the Church, and the court of last resort. There was no appeal from it.

Q. How long was the union in question in this cause discussed in the said Synod before any opposition was made by any one to the said union?

A. The negotiations began in eighteen hundred and seventy, and there was no opposition to anything but details until eighteen hundred and seventy-four, in June.

Q. Can you point out the first action upon which the Rev. Robert Dobie, Petitioner in this cause, entered a formal dissent respecting said union, or anything relating thereto?

A. At page 14 of the said minutes, November fifth, eighteen hundred and seventy-four, is his first dissent in regard to union.

Q. Were the other three Presbyterian bodies who joined with the Presbyterian Church of Canada in connection with the Church of Scotland to form said union, also independent, voluntary associations as well as the Presbyterian Church of Canada in connection with the Church of Scotland?

A. They were on precisely the same footing.

Q. Would you kindly state the object which these four bodies had in view before the said union was effected?

A. To promote the cause of Christ throughout the length and breadth of the land; to promote the spiritual interests of the inhabitants of the several Provinces.

Q. And, I suppose, Presbyterian doctrines and principles?

A. Of course, through that.

Q. What object had they in uniting?

A. To further religious ends all the better.

RECORD.

In the
Superior
Court.

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

Q. They thought they could promote these better as a united body than as four separate and distinct bodies?

A. They did. One way especially—instead of having two or three struggling congregations in one place it was hoped that these might unite and become one self-supporting, strong congregation; and also that we might the better prosecute Home and Foreign Missionary operations.

Q. Did the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland at any time previous to the said fifteenth of June, eighteen hundred and seventy-five, incorporate with itself the ministers of any other Church or Churches, individually or as a body?

A. They incorporated the ministers of the United Synod of Upper Canada.

Q. Is there any reference to this in the minutes?

A. There is a reference, which will be found at page 13 of the minutes of the said Synod for eighteen hundred and forty. There are the names of eighteen ministers who were received into the said Presbyterian Church of Canada in connection with the Church of Scotland and placed on the rolls of the Presbyteries within whose bounds their congregations were situated.

Q. Are you aware whether or not the protest which has been filed by the Petitioner in this cause, stated to have been served upon the said Synod on the fifteenth of June, eighteen hundred and seventy-five, by the ministry of C. Cushing, notary public, was read in the presence of the Synod?

A. It was not read.

Q. You, being clerk on that occasion, received it and would know?

A. The moderator received it, and I would have read it, but it was not read. It was quite a lengthy document.

Q. Would you kindly inform me whether a person who has been appointed as a licentiate of the Church in Scotland, holds the same position as an ordained minister, or is such man, strictly speaking, a minister at all?

A. He is only a licentiate, he is not a minister. There are two terms that are applicable to such a person's position; he is called a licentiate, as a man licensed to preach the Gospel; he is also called a probationer for the holy ministry, as one who is on probation, who is on trial for that sacred office.

Q. And while he is exercising the functions of a licentiate what duties can he undertake or do?

A. He can preach, but he cannot administer the sacraments.

Q. Subsequently he has to be ordained as a minister?

A. He has to be ordained before he can be inducted into a charge.

Q. And then after that comes what is called induction, when a man is placed over a congregation?

A. Yes; it may be at the same time as the ordination, or the ordination may precede it.

Q. According to the polity of the Presbyterian Church of Canada in connection with the Church of Scotland, I understand a man can only be ordained once to the office of the ministry?

A. Only once. And I may remark, that I was present at Mr. Dobie's ordination.

Q. As you state you were present at the ordination of the said Rev. Robert

Dobie, can you state whether upon that occasion he took the usual vows prescribed by the Church and went through the usual formula, and whether or not he assented or declared his adherence to the Declaratory Act of Independence which you have already referred to, passed by the Synod in eighteen hundred and forty-four?

A. Yes, his ordination was regularly conducted; it was conducted by the Rev. Andrew Bell, who was Synod clerk—a most accurate man.

Q. Will you kindly point out in the minutes of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, the first minute which refers to the claim made by the said Synod, or ministers thereof, to share of the proceeds of the Clergy Reserves?

A. It occurs in Respondents' Exhibit marked 33, filed in this cause, and is to be found on page 16 of the minutes of the said Synod, eighteen hundred and thirty-one. In an address from the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland to the General Assembly of the Church of Scotland, occur the following words:—"Your Venerable Assembly knows that there are many external relations and interests of a Church which may be best watched over by a general court, and that amongst these the most interesting to the Churches under the jurisdiction of the Synod is their right to a share in the lands set apart for the maintenance of a Protestant Clergy." What led to the assembling of the convention of ministers and elders which resulted in the formation of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, was the despatch of Sir George Murray to Sir John Colborne, Lieutenant-Governor of Upper Canada. Sir George Murray, I believe, was Secretary of State for the Colonies. The despatch was suggesting the desirableness of the formation of a Synod, or Presbytery, embracing all Presbyterian ministers in the Province without distinction, in order to facilitate the payment to certain ministers by the Government of their allowances, as appears at pages 13 and 14 of the minutes of the said Synod, eighteen hundred and thirty-one, and contained in said Exhibit 33.

Q. Were you not a delegate from the Presbyterian Church of Canada in connection with the Church of Scotland to the General Assembly of the Church of Scotland in Scotland, in the year eighteen hundred and seventy-five, when they passed a resolution which you have referred to already?

A. I was.

Q. Can you state to what extent the said Temporalities Fund, managed by the Board, Respondents, has been relieved since the said union by the death or removal of parties having claims upon it?

A. To the extent of the annual sum of three thousand seven hundred and fifty dollars, which capitalized at six per cent. represents sixty-two thousand five hundred dollars.

Cross-Examined without waiver of objections.

Q. You stated that the Government dealt through the Synod with regard to the commutation of the Clergy Reserves, and not through individuals; is it not a fact that each individual commutator was obliged, and did in fact give a power of attorney to Dr. Cook to represent him in the matter?

A. Yes.

RECORD.

*In the
Superior
Court.*

No. 52.
Deposition
of Rev.
John Hugh
MacKerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

Q. What, then, do you mean by saying that the Government dealt entirely through the Synod, and not with individuals?

A. Because individuals applied to the Government to be dealt with directly, and they were refused; and I can give you two instances—Rev. Wm. Johnson, of Saltfleet, and the Rev. Hamilton Gibson, of Galt.

Q. Did not the Government deal with Dr. Cook as representing the different individual commuters?

A. They did; what I said in my examination-in-chief was that the Government commuted with individuals through the Synod.

Q. Would any resolution of Synod have been sufficient of itself for the Government to have acted upon towards the individual commuters in regard to this fund, apart from the power of attorney which each individual gave?

A. No, a power of attorney was necessary, and the Synod appointed Dr. Cook as the attorney.

Q. And the individual members, commuters, accepted Dr. Cook's nomination to be their representative?

A. Yes, and they could not have commuted through any other person.

Q. How comes it that the page marked "A" in the book filed by the Petitioner as "BBB," and in the minutes of Synod of eighteen hundred and seventy-five, of the Presbyterian Church of Canada in connection with the Church of Scotland, is inserted after the Index?

A. It ought not to be there. I have stated in my examination-in-chief that it should come after page 40. It happened from an inadvertence. I was out of the country for a year. I arrived here on the morning of the second day of the Synod, remained here for the Synod and the first General Assembly of the Presbyterian Church in Canada, went on up to Kingston, but staid only a few hours, as I had no house there at the time and my family were in Peterborough. My only child I had not seen for a year, and I pressed on. Then from Peterborough I sent the manuscript to the printer, at Kingston, of these minutes of Synod, and the minutes of the General Assembly to the printers at Toronto. I had to do both, and I had given directions to hurry on with the work, and the printer passed on, and then it was printed just afterwards. That is the explanation. I did not return to Kingston until October.

Q. I understand you to say it was part of the written minutes you had sent to the printer?

A. Yes, but not in time to come after page 40. He went right on.

Q. But did you send the contents on page 2 in manuscript to the printer at the same time that you sent the rest of the minutes of the year eighteen hundred and seventy-five?

A. No; I sent the minutes in piecemeal as I wrote on. That is the way I always do if I am away from Kingston.

Q. Did you send the minutes which are on page "A" separate by themselves?

A. Yes.

Q. The rest of the book had been printed at that time, and consequently the printer had to put it in as a fly-leaf at the end?

A. The printer did not put it in at all. It was printed separate on a fly-sheet, and any man could put it in where it ought to be placed.

Q. But you are in possession, I suppose, of a book of your own, showing the printed minutes of the Presbyterian Church of Canada in connection with the Church of Scotland for the year eighteen hundred and seventy-five, are you not?

A. Certainly.

Q. Then where does this leaf A appear on your printed copy?

A. On looking at the printed minutes which I have, the said minutes on page A appear after page 40. I may also add that I am governed only by the written record, which I produce?

10 *Q.* Were the minutes on page A issued with the ordinary minutes, or were they issued separately?

A. I have nothing to do with the issuing of the printed minutes. When I am in Kingston I sometimes ask the printer how he is getting on; but I was three months away from Kingston, without returning to it.

Q. Will you please explain how it is that the minutes which appear on page A of the book "BBB" filed by the Petitioner, when inserted in the book which you have in your possession, of the said printed minutes, after page 40, contains no page number, whereas the next page number is the first page of the memoranda, and is the page numbered 41?

20 *A.* Well, the printer has printed the memoranda before he printed the minutes which are on page A of the said book "BBB."

Q. And when you got your book bound, you put it in before the memoranda, which is the proper place, according to your opinion?

A. Yes.

Q. The minutes on page A in the printed book of the original minutes refer to the transactions of the Skating Rink in Montreal, on the fifteenth of June, eighteen hundred and seventy-five?

A. Yes, all that is there refer to it.

30 *Q.* According to the rules and procedure in the Presbyterian Church of Canada in connection with the Church of Scotland, in what form are motions affecting the interest of the Church generally brought before the Synod?

(Objected to as illegal, as not pleaded, as no way in issue, and as not arising out of the examination-in-chief. Objection reserved by the parties).

A. "Business may be brought before it by bills, overtures, petitions, "memorials, references, complaints, appeals, or other documents." I quote from minutes of the said Synod, eighteen hundred and sixty-eight, page 49, under the head of "Synod," "II," "2."

40 *Q.* Was the rule of the Synod up to the 15th of June, eighteen hundred and seventy-five, to be found on page 35 of the minutes of eighteen hundred and fifty-nine, and which reads as follows: "The only way in which any public act "or standing order may be competently modified or suspended shall be by the "introduction of an overture or petition through the Committee on Bills and "Overtures, which overture or petition must detail fully the circumstances in "which and the reasons for which any modification of the terms or temporary "suspension of the operation of any public act or standing order is required"—in force from the said meeting of Synod of eighteen hundred and fifty-nine up to the said date of union?

RECORD.

*In the
Superior
Court.*

No. 52.

Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

(Objected to as illegal, irrelevant to the issues, and not arising out of the examination-in-chief. Objection reserved by the parties).

A. These standing orders, I think, were not repealed.

Q. In what form did the question of union of the different Presbyterian bodies come before the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, you having stated in your examination-in-chief that it came before the Synod in eighteen hundred and seventy?

(Objected to, the form in which the question of union came before the Presbyterian bodies not being pleaded nor attacked in the issues raised in this cause, and also as illegal and not arising from the examination-in-chief. Objection reserved by the parties).

A. It came before the Synod in two documents, the one a communication from the Rev. Dr. Ormiston, moderator of the General Assembly of the Canada Presbyterian Church, to the Rev. Dr. Jenkins, moderator of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland. That was the one document, which is to be found on page 31 of the minutes of the said Synod, eighteen hundred and seventy. The other was an overture subscribed by members of the congregation of Lindsay, referred to on page 37 of the minutes of said Synod of eighteen hundred and seventy.

Q. What was done with the overture you last referred to?

A. "As a committee has already been appointed to meet similar committees that may be chosen by the other sections of Presbyterianism in the Dominion for the purpose of considering the whole subject of union," the Synod resolved that further action on the overture was unnecessary. This appears on page 37, eighteen hundred and seventy.

Q. Is not the next reference to the said union to be found on page 114 of the Synod minutes of eighteen hundred and seventy-one, being the minutes of a Joint Committee, of which the following is an extract: "Extract, Minutes of the Supreme Courts of the various Churches appointing committees were read, as also the letter of the Rev. Dr. Ormiston, of Hamilton, on the ground of which, and of the sentiments expressed therein, the said action of these Churches was taken"?

(Objected to, the form in which the question of union came before the Presbyterian bodies not being pleaded nor attacked in the issues raised in this cause, and also as illegal, and not arising out of the examination-in-chief. Objection reserved by the parties.)

A. That is not the next reference; that is a mere appendix. There are references on pages 26, 27 and 31.

Q. But is not the one I have referred to the next reference in order of date—the report of the committee?

A. Yes, but that is a report that was submitted to the Synod.

Q. Could you tell us how many constituent members of Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, there were altogether on the fifth of November, eighteen hundred and seventy-four?

A. One hundred and fifteen ministers and one hundred and seventeen elders.

Q. How many congregations were there in the said Church entitled to be represented in the Synod at the time?

A. One hundred and twenty-three, that is to say, pastoral charges, which might embrace one or more congregations each.

Q. How many ministers and elders, members of Synod, voted on the resolutions of Mr. Gordon, found on page 13 of the minutes of eighteen hundred and seventy-four, relating to the consummation of union?

(Objected to as illegal, not in issue, and not arising out of the examination-in-chief. Objection reserved by the parties.)

10 A. Eighty-five voted. I can make no distinction as to the respective numbers of ministers and elders.

Q. How many voted in favor of the said motion and how many against?

A. Sixty-eight for, and seventeen against.

Q. According to that there would be one hundred and thirty-seven members of Synod who were not present and who did not vote at all on the resolution?

(Objected to as illegal, not in issue, and not arising out of the examination-in-chief. Objection reserved by the parties.)

20 A. Yes. The proportion of elders who attend is generally small; as a rule, I should say it would be about one-third.

Q. How many congregations did the vote in favor of said motion represent?

(Objected to as illegal, not in issue, and not arising out of the examination-in-chief. Objection reserved by the parties.)

30 A. I could not say. Each congregation or pastoral charge is represented by one minister and one representative elder. They may or may not be there. But I cite as my experience of twenty-five years that as a rule not over one-third of the elders are generally present. There were thirty-one congregations represented by minister and elder. Then there were forty represented simply by their ministers, and four represented by the elders only. There were thirty-one congregations represented by both minister and elder.

Q. How many members of Synod of the Presbyterian Church of Canada in connection with the Church of Scotland were there on the roll in June, eighteen hundred and seventy-five, at the date of the meeting of Synod of that year?

A. One hundred and seventeen ministers, and one hundred and sixteen elders were on the Synod roll at that date, making two hundred and thirty-three altogether.

Q. Can you state how many members of Synod were present at the passing of the resolution to be found on page 35 of the minutes of eighteen hundred and seventy-five?

40 A. I could not.

Q. Could you give me the largest number that at any one time attended that sederunt?

A. The heads were not counted in regard to the motion to be found on page 35, the record respecting which states that there was an overwhelming majority. In regard to the motions recorded on pages 28 and 29, the members present appear to have been ninety-nine. Ninety voted for a motion to proceed to the consummation of the union, and instruct the moderator to sign the articles

RECORD.

In the
Superior
Court.

No. 52.
Deposition
of Rev.
John Hugh
MacKerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

RECORD. of union at such time as may be named by the Synod at a subsequent diet. Seven voted for a motion that the Committee on Legislation continue their labors until such time as certain alleged discrepancies between the Acts regarding union passed by the Legislatures of Ontario and Quebec be removed, and two would not vote.

—
In the
Superior
Court.
—

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

Q. According to the minutes of the session of Synod, in June, eighteen hundred and seventy-five, what is the largest number who appear to have voted at any one time on any question?

A. As far as I can see that was the largest vote; and I may remark that it was a very large vote, according to ordinary voting in the Synod.

Q. You stated that the Synod adjourned to the Skating Rink, and remained there legally constituted about an hour; what was it doing during that hour in the Skating Rink?

A. We first constituted, and then we had to wait until the other three bodies came filing in; and then I think they read over the resolutions of each body resolving to go on with the union; and then there was the reading of the basis of union, the resolutions, and odds and ends of that kind.

Q. Referring to the original articles and basis of union which you have in your possession, and which were signed in the Skating Rink as you have stated, is it not true that there is no date to the said articles and basis of union further than "1875," written in figures?

A. Yes. It was an omission of the clerk, but I can certify the articles were signed on June fifteenth, eighteen hundred and seventy-five.

Q. I suppose you only know that these three other gentlemen were moderators of the three Churches that united with your body from the mere fact of their having signed in that capacity; you have no official information of that fact, have you?

A. The bodies sat here for a week, and I knew these gentlemen were moderators. One sat in Knox Church, one in St. Paul's, and another in Erskine.

Q. Would you point out the questions that were put to you and to the other ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, at ordination?

A. The questions put to me were those in existence in eighteen hundred and fifty-three. A new series was adopted in eighteen hundred and sixty-seven, which will be found on page 31 of the minutes of that year. Then these were changed for others adopted in eighteen hundred and seventy-two, which will be found on pages 45 and 46.

Q. Is there any substantial difference between these?

A. No, no substantial difference.

Q. In addition to these questions is there not a formula to be subscribed to, which is found on page 35 of the Synod minutes of eighteen hundred and sixty-seven?

A. Yes; there is a formula. Whenever there are questions there must be a formula to give a summary. The formula is at page 35 of the minutes of Synod of eighteen hundred and sixty-seven, and it is a *résumé* of the questions. In regard to the formula to be found at page 47 of the minutes of Synod in eighteen hundred and seventy-two, it is a *résumé* of the questions adopted in eighteen hundred and seventy-two.

Q. Is it not true that ministers ordained in the Church of Scotland and also by the Presbyterian Church of Canada in connection with the Church of Scotland, have always had to subscribe to the Confession of Faith in its entirety?

A. They have; just as they have in the Presbyterian Church in Canada.

Q. You spoke of the General Assembly of the Church of Scotland having passed a resolution, in which, amongst other things, they wished God-speed to the united church in the work of the Lord; is it not a common practice among Christian bodies to do the same thing, and did not the Presbyterian Church of Canada in connection with the Church of Scotland, pass a resolution wishing the Methodist body God-speed in the work of the Lord at the session of Synod in eighteen hundred and sixty-eight?

A. Oh! it is quite possible that one Christian body should wish it to another. But that is only a sentence of the deliverance.

Q. Do you not find the minute I refer to on page 28 of the minutes of June, eighteen hundred and sixty-eight, having reference to the passing of a resolution for the extension of fraternal greetings to the Methodist body?

A. Yes.

Q. Do not ministers of the Church of Scotland subscribe to the Confession of Faith in its entirety at induction and ordination?

A. They do.

Q. Has there been any rule or regulation made in the Church of Scotland, by which it is declared that nothing contained in the Confession of Faith or Catechisms regarding the power and duty of the civil magistrates shall be held to sanction any principles or views inconsistent with full liberty of conscience in matters of religion?

(Objected to, as illegal, as we have nothing to do with the Church of Scotland in this cause; the question being irrelevant and not arising out of the examination-in-chief. Objection reserved by the parties.)

A. There is no rule or regulation, but they hold it although not expressed.

Q. What is your authority for saying they hold it?

(Objected to, as illegal, as we have nothing to do with the Church of Scotland in this cause; the question being irrelevant and not arising out of the examination-in-chief. Objection reserved by the parties.)

A. My authority is, it is evident, on the face of this understanding.

Q. Of what understanding?

A. It is evident on the face of the understanding referred to. The clause begins: "It being distinctly understood." It is evident on the face of the understanding that the Church of Scotland, or the Presbyterian Church of Canada in connection with the Church of Scotland, would not hold that the clause in the said Confession regarding the power and duty of the civil magistrate did sanction principles or views inconsistent with full liberty of conscience in matters of religion.

Q. Are you not now reasoning that there is a relaxation of the rule regarding an adhesion to the Confession of Faith in its entirety in the Church of Scotland from the fact that the Presbyterian Church of Canada in connection with the Church of Scotland, or the members of it which went into the union, appear

RECORD.

In the
Superior
Court.

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

RECORD. to have subscribed to a relaxation of it with regard to the power of the civil magistrate ?

*In the
Superior
Court.*

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

A. I hold that there is no relaxation.

Q. State your authority for declaring that the adhesion which ministers are bound to give at induction and ordination to the Confession of Faith in the Church of Scotland, can be interpreted in the sense indicated by the second clause of the basis of union ?

(Objected to, as illegal, and as we have nothing to do with the Church of Scotland in this cause. Objection reserved by parties.)

A. Because to attribute to the Church of Scotland views inconsistent with 10 that clause would be to insult them.

Q. This is your own interpretation merely, is it not ?

A. My own interpretation ; and I have conversed on this matter with ministers of the Church of Scotland, and largely with ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and they have agreed with me in that opinion.

Q. Can you give any work of authority on the Confession of Faith that will bear out the interpretation you have given to this matter ?

(Objected to, as illegal and irrelevant, said Confession of Faith being a document which speaks for itself, and any work thereon expressing merely the opinion 20 of its author being of no more value than the opinion of the witness. Objection reserved by the parties.)

A. I am not aware of any works on the Confession of Faith or referring to it, but I may mention—perhaps it will be an authority—that in eighteen hundred and seventy-one the Rev. Gavin Lang moved the adoption of a similar clause, namely : “That full liberty of opinion in regard to the power and duty “of the civil magistrate in matters of religion as set forth in the said Confession, “is allowed.”

Q. Was it carried ?

A. It was not carried. 30

Q. Do you pretend, then, that it is any authority if it was not carried ?

A. I merely mentioned that as a fact.

Q. To return to the region of facts and authority, can you mention any work whatever on the Church of Scotland, its rules, laws, or regulations that will bear out the interpretation that you have given to the twenty-third chapter of the Confession of Faith ?

(Objected to, as illegal, the Church of Scotland being not in issue in this cause, the question not arising out of the examination-in-chief, and the witness not having referred to the twenty-third chapter of the Confession of Faith in his examination-in-chief. Objection reserved by the parties.) 40

A. No, because it is an axiomatic truth.

Q. Before joining the Presbyterian Church in Canada you were a member of the Presbyterian Church of Canada in connection with the Church of Scotland, were you not ?

A. I was a member and a minister.

Q. At your induction and ordination as a minister of the Presbyterian Church of Canada in connection with the Church of Scotland did you not give in

a full adhesion to the Larger and Shorter Catechisms and to the Confession of Faith in its entirety?

(Objected to, as irrelevant to the issues, to the Confession of Faith, but not to the Larger and Shorter Catechisms. Petitioner waives the question.)

Q. When were you ordained?

A. In September, eighteen hundred and fifty-three.

Q. At the time of your ordination and subsequently up to the fifteenth of June, eighteen hundred and seventy-five, did the Presbyterian Church of Canada in connection with the Church of Scotland, or the Synod thereof, for the purposes of the said Presbyterian Church of Canada in connection with the Church of Scotland, ever deem it necessary to declare or enact that it was distinctly understood that nothing contained in the aforesaid Confession (to wit, the Confession of Faith) or Catechisms, (to wit, the Larger and Shorter Catechisms), regarding the power and duty of the civil magistrate shall be held to sanction any principles or views inconsistent with full liberty of conscience in matters of religion?

A. They never found it expedient so to do.

Q. Why then, was it necessary to put in the clause just referred to, in the basis of union of the Presbyterian Church in Canada?

(Objected to as irrelevant. Section reserved by the parties).

A. During the negotiations for a union, it appeared that some of the parties were of the opinion that this chapter in the Confession regarding the power and duty of the civil magistrate did sanction principles or views inconsistent with full liberty of conscience, in matters of religion. The Presbyterian Church of Canada in connection with the Church of Scotland, and the Presbyterian Church of the Maritime Provinces in connection with the Church of Scotland held that the chapter could not be interpreted to sanction any such principles; and a part of the other Churches, the Canada Presbyterian Church and the Presbyterian Church of the Lower Provinces of British North America, thought as I have stated. They said to us: If you hold that there is nothing contained in that that does sanction principles or views inconsistent with full liberty of conscience in matters of religion, why not say so, it will be an obstacle removed, and we said: We will say so, and we will put it down. But it is a view we have always held, and we did not think it necessary to put it down, but in order to remove a difficulty or scruple we had it inserted, believing it was only an explanation.

Q. When you say the Presbyterian Church of Canada in connection with the Church of Scotland held a particular view with regard to this twenty-third chapter of the Confession of Faith, did you not mean in the last answer those members who had belonged to that Church who had joined, or were willing to join, in the formation of the union referred to?

A. I mean them all.

Q. You have stated that the Presbyterian Church of Canada in connection with the Church of Scotland and all its members held the view with regard to the Confession of Faith embodied in the second clause of the basis of union, even before the said union; can you point out where the said Church in its Synod declared that such was the interpretation of the Church with regard to this matter?

A. No, because we never found it necessary or expedient to do so.

*In the
Superior
Court.*

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

Q. You went on individual opinion ?

A. No, I gave a general consensus of opinion.

Q. Do you think you gave the opinion of all the members of the Presbyterian Church of Canada in connection with the Church of Scotland ?

A. I do.

Q. Before the said union, was there perfect harmony between the Presbyterian Church of Canada in connection with the Church of Scotland and the Canada Presbyterian Church in its interpretation of the twenty-third chapter of the Confession of Faith on the powers of the civil magistrate, in other words, was there a consensus of opinion between those two Churches as regards said chapter ? 10

(Objected to, as illegal, the question of harmony, or the reverse, between the said two Churches, having nothing to do with the issues in this cause, and whether or not there was harmony, all the said Churches agreed on a common basis of union. Objection reserved by the parties).

A. I am inclined to believe that there were many in the Canada Presbyterian Church who did think that this chapter sanctioned views or principles inconsistent with full liberty of conscience in matters of religion.

Q. The ministers, then, ordained in the said Canada Presbyterian Church before the said union were not, at their ordination or induction, required to subscribe to the said Confession of Faith in its entirety, were they ? 20

(Objected to as illegal and not in issue, the Canada Presbyterian Church or its ministers having nothing to do with the issues raised in this cause, and, besides, as not arising out of the examination-in-chief. Objection reserved by the parties).

A. I could not say without referring to the books, which I have not here.

Q. Could you give your impression ?

A. No, I would not give impressions. I never like to give anything without being able to verify it.

Q. I understand you cannot verify any authority in the records of the Presbyterian Church of Canada in connection with the Church of Scotland, by which it was found necessary for that Church to put the interpretation upon the Larger and Shorter Catechisms and the Confession of Faith, twenty-third chapter, that has been put upon the latter in article 2 of the said basis of union ? 30

A. The fact that it was so put I can verify by referring to the minutes.

Q. You mean for the purpose of this union ?

A. I do.

Q. But antecedent to the said union and the purposes thereof, can you verify any records showing such interpretation ?

A. No occasion ever arose.

Q. Does a record of the kind exist ? 40

A. No.

The examination of this witness is adjourned.

And on this ninth day of July, of the year aforesaid, re-appeared the said witness, John Hugh Mackerras, and continued his evidence as follows :

Q. Is it not true that the Presbyterian Church of Canada in connection

with the Church of Scotland, was always regarded as a branch of the Established Church in Scotland? RECORD.

A. It is an offshoot, but not a branch.

Q. Is it not true that it has been frequently styled a branch of that Church by the Synod, and in various resolutions and memorials passed by that body?

A. Yes, but these terms are to be looked at in the light of, and derive the extent of their meaning from, the Declaratory Enactment already referred to, of eighteen hundred and thirty-three, and the Act of Spiritual Independence already referred to, passed in September, eighteen hundred and forty-four.

Q. How do you explain the words to be found in the petition addressed to the King in the year eighteen hundred and thirty-one, to be found on page 20 of the Exhibit 3, 3, being minutes of Synod for that year, and being as follows: "Your Majesty's Petitioners would exceedingly regret to see the Clergy of the Church of Scotland deprived of that support which is essential to ensure their respectability or usefulness, but belonging to the Established Church of a portion of the British Empire, they could not but feel it humiliating and unfortunate that they should not be considered worthy of the same measure of support when the means are not wanting to afford ample encouragement to both?"

A. At the time the language in question was used the Synod was not aware of the exact relation in which it stood to the Church of Scotland, the language in question being used in eighteen hundred and thirty-one, and the Declaratory Enactment of the Church of Scotland, defining the connection between the Church of Scotland and the Presbyterian Church of Canada in connection with the Church of Scotland, not being passed until eighteen hundred and thirty-three.

Q. Do you not find that down even to the year eighteen hundred and seventy-two the said Presbyterian Church of Canada in connection with the Church of Scotland, called itself a branch of the Established Church of Scotland, in Scotland? I refer you to the minutes of June, eighteen hundred and seventy-two, page 32?

A. That resolution contained no enactment of the Synod and did not form part of the constitution of the Church, and therefore must be viewed in the light of the Act of Independence, passed in September, eighteen hundred and forty-four.

Q. In your examination you referred to the union of the United Synod of Upper Canada with the Presbyterian Church of Canada in connection with the Church of Scotland, did you not?

A. Rather the incorporation.

Q. Those under the jurisdiction of what was called the United Synod of Upper Canada actually came into the Presbyterian Church of Canada in connection with the Church of Scotland, did they not?

A. Yes; they incorporated with them.

Q. And they did not wish that their name should be adopted by the united body, or any other name, but they took the name of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. They did.

*In the
Superior
Court.*

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

Q. And the delegate of the United Synod declared that the basis of union to which the United Synod of Upper Canada would agree to would be the standards of the Church of Scotland?

A. You are eight years too far ahead. Those negotiations were broken off. There were some ministers who came in, for instance, the Rev. Wm. Bell of Perth, and the Rev. Dr. George.

Q. Whoever came in from the United Synod of Upper Canada to the Presbyterian Church of Canada in connection with the Church of Scotland, came in accepting the standards of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. They did.

Q. Will you look at page 11 of the minutes of Synod of the Presbyterian Church of Canada in connection with the Church of Scotland for eighteen hundred and forty, and state whether it is not declared in a letter on the subject of the said union of the said United Synod of Upper Canada with the Presbyterian Church of Canada in connection with the Church of Scotland, said letter being signed by the moderator and clerk of said United Synod, that "as the Presbyterian Church of Ireland (to which many of the said ministers of the said "United Synod belong) is in connection with the Church of Scotland and its "ministers are all admissible into your Synod, we can see no difficulty in the way "of its introduction." Is it not so declared in a letter at that page?

A. These words are there.

Q. Did not said United Synod, as appears from page 12 of the minutes of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, for eighteen hundred and forty, unanimously declare, as appears by the certificate of their moderator and clerk, "That the ministers of the United "Synod, before taking their seat, either in the Synod of Canada or Presbyteries, "will sign the usual formula for ministers of the Church of Scotland"?

A. These words are here and form part of the basis of union between the Presbyterian Church of Canada in connection with the Church of Scotland and the United Synod of Upper Canada.

Being requested, I herewith produce an extract from the minutes of the Acts and Proceedings of the General Assembly of the Church of Scotland, portions of which I have already referred to, and which are identified as being marked with the letter Z5, and which I certify as being correct.

Re-Examined without waiver of objections.

Q. You have referred in cross-examination to rule 4 of standing orders, page 34 of the said minutes of Synod for the year eighteen hundred and fifty-nine; please state whether said standing order and rule apply in any way to the question of the union in question in this cause?

A. It does not apply, but refers to the modifying or suspending of a public act or standing order.

Q. Are you sure that on the fifteenth of June, eighteen hundred and seventy-five, upon the adjournment of the said Synod to Victoria Skating Rink the said Synod continued in session there for about an hour before the said articles, basis of union, and resolutions were signed by the said moderators?

(Objected to, as illegal, inasmuch as the witness said in his examination-in-chief that the Synod remained for about an hour legally constituted in the said Rink before the articles of union were signed, and not being a question for re-examination. Objection reserved by the parties.)

A. I am perfectly certain.

Q. You are asked in cross-examination concerning the questions put to you at your ordination in eighteen hundred and fifty-three, and you stated that you subscribed to the Confession of Faith; in what manner did you adhere or subscribe to the Confession of Faith?

10 A. By verbally affirming assent to questions two in the list of questions put to those who are being ordained or inducted, as found on page 27 of the minutes of said Synod for eighteen hundred and fifty-three. The question to which I assented is as follows: "Do you sincerely own and believe the whole doctrine contained in the Confession of Faith, approved by the General Assemblies of the Church of Scotland and ratified by law in sixteen hundred and ninety, to be founded upon the Word of God: and do you acknowledge the same as the Confession of your Faith, and will you firmly and constantly adhere thereto and to the utmost of your power assert, maintain and defend the same, and the purity of worship as presently practised in this Church and asserted in Act 15, 20 "Assembly of seventeen hundred and seven, entitled 'Act against Innovation in the worship of God.'" That question is the same as the question put in the Church of Scotland, with the exception of a word omitted, namely, "practised in this Church," instead of "practised in this National Church." That is one form in which I expressed adherence, and I expressed it in another form by signing the formula which follows, page 29 of the minutes of eighteen hundred and fifty-three; "I do hereby declare that I do sincerely own and believe the whole doctrine contained in the Confession of Faith approved by the General Assemblies of the National Church of Scotland and ratified by law in sixteen hundred and ninety, and frequently confirmed by divers acts of Parliament since that time, to be the 30 "truths of God, and I do own the same as the confession of my faith." The rest of it refers to the other questions.

Q. Do I understand you to mean that in the questions put by the Church of Scotland, in Scotland, at the place you have indicated in the second question, the word "National," which occurs in the Church of Scotland question, has been dropped by the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, in framing their second question you have just referred to?

A. It has been dropped.

Q. How many times have these questions and formula been changed since 40 eighteen hundred and fifty-three by the Presbyterian Church of Canada in connection with the Church of Scotland?

A. The form of polity containing these questions, and from which I have quoted for eighteen hundred and fifty-three, was changed in eighteen hundred and sixty-three, but not the questions. I have compared them word for word; they seem to be exactly the same. The polity was changed but not the questions embraced in it. These questions were changed by the Synod in eighteen hundred and sixty-seven, page 31, and they were still further changed by way

RECORD.

In the
Superior
Court.

No. 52.
Deposition
of Rev.
John Hugh
Mackerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

RECORD. of modification and simplification in eighteen hundred and seventy-two, as appears on pages 45 and 46 of said minutes.

*In the
Superior
Court.*

No. 52.
Deposition
of Rev.
John Hugh
MacKerras,
produced by
Respondents
filed 7th
July 1879.
—continued.

Q. Was it obligatory according to the law and practice of the said Presbyterian Church of Canada in connection with the Church of Scotland, to introduce to the Synod all business by means of an overture?

A. It was not. It was not required by our Barrier Act, as it is required by the Barrier Act for the Church in Scotland.

Q. Where is your Barrier Act to be found?

A. In the minutes of the said Synod for eighteen hundred and thirty-eight, page 15, of Petitioner's Exhibit "BBB," and which reads as follows: "That the legislative enactments of this Synod be regularly transmitted to the several Presbyteries, and be in force only for one year if a dissent of a majority of Presbyteries be intimated to the meeting of Synod next after that, at which such enactment shall have been respectively made." The same is repeated in the minutes of Synod for eighteen hundred and sixty-nine, page 39.

Q. You stated in your cross-examination that the ministers of the United Synod of Upper Canada, who were incorporated with the said Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, signed the usual formula of the Church of Scotland, will you explain why that particular formula was used upon that occasion?

A. Because the Synod had not prepared one of its own. That of eighteen hundred and fifty-three seems to have been the first prepared.

Re-Cross-Examined without waiver of objections.

Q. Why do you call the section on overtures that you have read from page 13 of the minutes of eighteen hundred and thirty-eight, the Barrier Act for the Church in Canada?

A. Well, just because it indicates what the name does—it is a barrier to hasty legislation, and an act of a similar nature is so called in the Church of Scotland. We have not the part of the Church of Scotland, requiring the introduction of all business by an overture, and they require an assent and we require a dissent.

Q. The minutes themselves were not styled as a Barrier Act?

A. It was not styled as a Barrier Act at the time it was inserted, but afterwards when it was spoken of—and I don't suppose there was one year it was not spoken of—it was called the Barrier Act; to be safe, I will say, in almost every session of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland since it was enacted.

Note.

In reference to the deliverance of the General Assembly of the Church of Scotland on the Report of the Colonial Committee, and which deliverance I have quoted on pages 28, 29 and 30 of my deposition, I wish to state, that I was a delegate to the said General Assembly of the Church of Scotland of eighteen hundred and seventy-five, and was present when said deliverance of the General Assembly was passed.

And further deponent saith not, and this deposition having been read to him, he declares it to contain the truth. S. A. ABBOTT, Stenographer.

Schedule No. 68.

RECORD.

On this ninth day of July, in the year of our Lord one thousand eight hundred and seventy-nine, personally came and appeared Rev. John Jenkins, doctor of divinity and doctor of laws, minister of St. Paul's Church in the city of Montreal, aged sixty-five years, a witness produced on the part of the Respondents, who being duly sworn, depose and saith:

I am one of the Respondents in this suit.

Q. You are a minister of the Presbyterian Church of Canada in connection with the Church of Scotland?

10 A. Yes.

Q. And also, I think, a minister of the Church of Scotland?

A. I am.

Q. Have you ever held any official position in the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland, and if so, state what?

A. I was elected moderator of Synod in eighteen hundred and sixty-nine, and served for a year.

Q. How long have you been a minister of the Presbyterian Church of Canada in connection with the Church of Scotland?

20 A. Fourteen years.

Q. During that time of what church have you been pastor?

A. Of St. Paul's Church, Montreal.

Q. And during those fourteen years have you constantly attended the church courts of the said Church?

A. Very regularly.

Q. Are you acquainted with the procedure of Synods and the laws and customs of the said Church?

A. I think so.

30 Q. You had large opportunity for becoming acquainted with the laws and procedure of the said Church, I suppose?

A. Yes.

Q. Can you tell me what constitutes a quorum of the said Synod?

A. Fifteen.

Q. Is that according to the rules of the Church?

A. According to the standing orders already quoted by Professor Mackerras, whom I heard examined.

Q. Has that rule been acted upon always in your experience?

A. In my experience, always.

Q. When you were moderator were you careful to see it was acted upon?

40 A. I never allowed any business to be opened or undertaken unless I felt sure there were fifteen persons or more in the court. I never constituted the court without seeing, either by the clerk or myself, that there were fifteen members or more present.

Q. I suppose you are acquainted with the nature and powers of the Synod of the said Presbyterian Church of Canada in connection with the Church of Scotland?

A. I think so.

*In the
Superior
Court.*

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.

RECORD.

*In the
Superior
Court.*

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

Q. Will you kindly state the nature of such powers, according to the laws and procedure and practice of the said Presbyterian Church of Canada in connection with the Church of Scotland?

(Objected to, as illegal, inasmuch as the Synod is governed by written laws and regulations, and it is not competent for the witness to give verbal evidence regarding them. Objection reserved by the parties).

A. The Synod is the supreme court of the Church. Its powers are twofold — first, judicial; second, legislative. As a judicial court, it is a court of final appeal in all cases of discipline tried in the lower courts and appealed from them. Legislatively, its jurisdiction is twofold — first, it has a spiritual jurisdiction bearing upon the control of all religious matters; second, it has a secular jurisdiction bearing upon all matters of property, or in the nature of property relating to the Synod. 10

Q. You might mention, please, the different church courts which exist, or have existed, in connection with the Presbyterian Church of Canada in connection with the Church of Scotland, specifying which is the supreme court?

A. Other than the Synod there were two lower courts, the Session and the Presbytery. The Session is a court created by and within a congregation, for its spiritual government. The Presbytery is a court consisting of all the settled ministers in a certain locality, together with a representative from each of the Sessions. This court has spiritual oversight over the charges or parishes of a particular district, and has, to a considerable extent, also secular oversight. 20

Q. And of what is the Synod composed? Who constitute its members?

A. The Synod is composed of all the ordained ministers in settled charges in the Church, with a representative elder from each Session: or, you may say, of all the members of each of the Presbyteries of which the Synod is composed.

Q. Then the Synod represents the whole of the congregations of the Church, as I understand?

A. It does. 30

Q. And how does the Synod act as a larger court; how does it arrive at a finding or result upon matters brought before it?

A. In regard to all matters, whether judicial or ecclesiastical or secular, by the vote or decision of a majority of its members.

Q. And is that binding on the minority and on the Church?

(Objected to, as illegal. Objection reserved by the parties.)

A. It is; that is, so long as the majority keep within the Church. We have no police to bring back erring members.

Q. Was the Presbyterian Church of Canada in connection with the Church of Scotland a body corporate, or was it an independent and voluntary association? 40

A. It was an independent and voluntary ecclesiastical association.

Q. Can you state how the said Church was formed?

A. It was formed at a convention of ministers and commissioners from the congregations in connection with the Church of Scotland, and as appears from a document I now hold in my hand, styled, "Minutes of Convention, being the 3rd page of Respondents' Exhibit 3,3 at the suggestion of a dispatch from the Secretary

of State for the Colonies, Sir George Murray, to Sir John Colborne, Lieutenant-Governor of Upper Canada, that dispatch relating to a union between the different classes of Presbyterians in Upper Canada, aforesaid. The dispatch is dated 1st of August, eighteen hundred and thirty. Such dispatch suggested on the part of the Imperial Government the desirableness of the union of the whole of the Presbyterian clergy of the Province, with a view to facilitate the disbursements of the money derivable from the Clergy Reserves.

Q. Was the said Church formed without reference to the Church of Scotland, in Scotland?

10 A. The Presbyterian Church of Canada in connection with the Church of Scotland, was formed altogether independently of any authority over, or of any knowledge by the Church of Scotland, in Scotland.

Q. Was its name also given to it in the same way?

A. The name originated with itself. In fact there was a suggestion subsequently of another name that came from the Colonial Committee of the Church of Scotland, the name suggested being "the Presbyterian Church of Canada having its standards and its forms of worship identical with those of the Church of "Scotland," but that name was not adopted by the Church in Canada.

Q. Was the said Presbyterian Church of Canada in connection with the 20 Church of Scotland, a branch of the Church of Scotland, in Scotland?

A. No; it was not a branch in that sense, it was rather a cutting set in another soil.

Q. What was the nature of the connection between the said Presbyterian Church of Canada in connection with the Church of Scotland, and the said Church of Scotland?

A. It was a connection of identity, of origin and of standards, both as to doctrine and worship, of ministerial communion in part, and of communion of members.

Q. Are these as they always were, or have they changed since the union 30 which is in question in this cause?

A. They are as they were; there has been no change.

Q. You say that the attitude of the Church of Scotland, in Scotland, has not changed since the said union; will you mention your reasons for so saying and give instances?

A. My reasons for so saying are these: The Church of Scotland, as before the union, has continued to aid the Presbyterian Church in Canada by donations from her funds; that she has received ministers of the Presbyterian Church in Canada into her parishes and courts in Scotland on the same terms which were in force before the union. In regard to donations, I instance Queen's College, 40 which still receives an annual grant from the Church of Scotland. I also instance moneys contributed by the Church of Scotland to the French Evangelization Society of the Presbyterian Church in Canada, and to the Home Mission of the Presbyterian Church in Canada. As to ministerial communion, I instance the case of the Rev. Wm. M. Black, a minister of the Presbyterian Church in Canada who took with him a Presbyterial certificate to Scotland, from the Presbytery of Montreal in connection with the Presbyterian Church in Canada, which certificate was received by the Presbytery of Kirkcudbright, and on which certificate he

RECORD.

In the
Superior
Court.

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

RECORD. was received into the Presbytery and inducted into the parish of Anwoth, having, before connecting himself with the Presbyterian Church in Canada, been ordained by a Presbytery of the Church of Scotland in Scotland. I instance the case of the Rev. Principal Snodgrass, D.D., whose position in this country was similar to that of the Rev. Mr. Black, and who was received on his Presbyterial certificate from the Presbytery of Kingston by the Presbytery of Langholm, in Scotland, in the Synod of Dumfries, Scotland, and thereafter inducted as minister into the parish of Canonby in said Presbytery.

*In the
Superior
Court.*

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

Q. Can you state what has been the attitude of the Church of Scotland, in Scotland, towards the union of the Presbyterian bodies which is in question 10 in this cause?

(Objected to, as illegal, inasmuch as the attitude of the Church of Scotland is a matter of record. Objection reserved by the parties.)

A. In eighteen hundred and seventy-one I was appointed by the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, a deputation to the General Assembly of the Church of Scotland upon the following resolution passed on Wednesday, the fourteenth day of June, eighteen hundred and seventy-one, by the Synod, as appears at page 36 Synod minutes: "Whereas, this Church has ever cherished and does still cherish devoted attachment to the Church of Scotland; and, whereas, it would at any time be proper to convey by 20 "deputation to the Mother Church an expression of our filial affection and profound esteem, but in the prospect of a union of all the Presbyterian Churches throughout the Dominion of Canada, it is especially becoming us to express our devotion and our desire for her continued sympathy, be it resolved that this Synod appoint, and they do hereby appoint, John Cook, D.D., Wm. Snodgrass, D.D., John Jenkins, D.D., and James Croil, agent of the Church, such deputation, with instructions to appear before the Venerable the General Assembly of the Church of Scotland at its next annual meeting, to assure the Assembly of the undiminished attachment of this Synod to the Parent Church, and to com- 30 "municate to the Assembly full information regarding the position of this Church, and especially as to the reasons which weigh with this Synod in their attempt to advance the interests of Presbyterianism in this part of the Empire by the consolidation of the several branches of the Presbyterian Church under the jurisdiction of one General Assembly." This resolution was unanimously adopted by the Synod. I did so appear before the General Assembly of the Church of Scotland at its meeting in May, eighteen hundred and seventy-two, and furnished the General Assembly to the best of my ability with all the information that I possessed respecting negotiations for union in so far as they had proceeded. Where- upon, after kindly expressions from the moderator, the General Assembly agreed to the following resolution: "That the General Assembly desire to record the 40 "high satisfaction with which they have heard of the energy, Christian zeal, and distinguished success with which their work as a Church is carried on by the Synod of which Dr. Jenkins is the representative, and in bidding them God-speed in the great work before them in a great country, daily advancing in wealth and population, they feel assured that that work will be carried on by God's help for the future as it has been in the past, and that no union of the "several Presbyterian bodies in Canada will be agreed to without their being all

"fully satisfied that the great object of extending the benefits of religion will by that union be even more vigorously and effectively carried on than now." The quotation goes on to say: "The moderator then, at their request, tendered the thanks of the Assembly to Dr. Jenkins for his able, eloquent, and most interesting address." I now hold in my hands the Acts published by the General Assembly showing the said resolutions from which the said quotation is copied. Further, in eighteen hundred and seventy-five a deputation from the Presbyterian Church of Canada in connection with the Church of Scotland appeared before the General Assembly in Edinburgh. This deputation was also sent by the Synod to

- 10 Scotland, in view of the negotiations which were going forward in regard to union, and at that General Assembly the following resolution was passed; "The General Assembly welcome with sincere sentiments of esteem and regard the respected deputies from the Synod of Canada as brethren whose sacrifices in promoting the religious interests of our countrymen in that colony have deserved the gratitude of the Church both at home and abroad, while receiving with profound concern and regret the intimation that on the subject of an incorporating union of Presbyterian Churches, threatened division in the Canadian Synods is endangering the cordiality of that co-operation which is so essential to the success of the work of the Church in all lands, the General Assembly claim no title to review the
- 20 proceedings which have issued in that result; but the General Assembly, while continuing to recognize all old relations with the brethren in Canada, are quite prepared to declare, after consideration of the terms of the proposed union as laid before them in their committee's report, as they hereby do declare, that there is nothing in the said terms of union to prevent the Assembly from cordially wishing God-speed in their future labors for the Lord to brethren who propose to accept the union on that basis, or from co-operating with them in any way that may be found possible in the new state of things in promoting the religious interests of Scottish Presbyterians in the Canadian Dominion." The last quotation I have read is from the "Principal Acts of the General Assembly
- 30 of the Church of Scotland," which I now hold in my hand. Then I was appointed in eighteen hundred and seventy-six a delegate to the General Assembly of the Church of Scotland from the Presbyterian Church in Canada in connection with Dr. Grant, now Principal of Queen's College. This was a year after the union took place, and we were sent to the General Assembly to report upon the position of matters in Canada in regard to that union. The following resolution was passed by the General Assembly—I read it from the printed Acts of the General Assembly,—eighteen hundred and seventy-six, of the Church of Scotland which I now hold in my hand:

(Petitioner objects to proving the Acts and Proceedings of the General Assembly of the Church of Scotland from a document purporting to be a printed copy thereof, the original not being produced. Objection reserved by the parties.)

A. "The Assembly have heard with much interest that the union of Presbyterians in the Dominion of Canada has at length taken place. The terms on which this union has been effected, having been brought under the consideration of the last General Assembly, and that Assembly having declared that there is nothing in those terms to prevent the Assembly from wishing God-speed in their future labors for the Lord to brethren who propose to accept

RECORD.

In the
Superior
Court.

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

RECORD. " union on that basis, or from co-operating with them in any way that may be found
 " possible in the new state of things, the General Assembly resolve to record, and
 " through the respected deputies from Canada to convey to the brethren in the
 " united church of the Dominion, an expression of their earnest prayer that
 " God may be pleased to hallow and bless the union, and to make it the means
 " of promoting peace as well as all the other interests of religion among the
 " people. The Assembly, at the same time, regret to learn that the threatened
 " division in the Canadian Synod, of which intimation was given in the Report
 " to the last General Assembly, has, to some extent, become a reality. As to
 " differing views of duty in regard to accepting or rejecting the union, the Assem- 10
 " bly, like all former Assemblies, express no opinion; but being persuaded that
 " those brethren who have declined to enter the united church, not less than
 " those who have accepted the union, have acted under a strong sense of duty,
 " the Assembly assure them of their continued regard and desire for their pros-
 " perity and usefulness. And, while the Assembly will not cease to pray and
 " use such means as may be within their power, and entreat their brethren in
 " Canada to unite in the same prayer and efforts, that all heats may be allayed
 " and any remaining division may be healed, they will cordially continue to co-
 " operate in any possible way with both parties in promoting the religious in- 20
 " terests of their colonial brethren. The General Assembly having learned from
 " the deputies that an impression exists in Canada, that the Church of Scotland
 " regards the action of those connected with her in Canada in forming the union
 " now consummated as an indication of disloyalty to the Parent Church, assure
 " the deputies that they entertain no such ideas; but, on the contrary, give full
 " credit to the representations which they have received from the brethren on
 " that subject." That is the resolution passed in my presence at the meeting of
 " the General Assembly of the Church of Scotland in May, eighteen hundred and
 " seventy-six, the proceedings of which I now hold in my hand and present.

Q. Then, from being present you have a personal knowledge that the last resolution which you have just quoted was passed by the General Assembly of 30 the Church of Scotland?

A. I have a personal knowledge that that resolution was passed.

Q. Will you be kind enough to state if you know how far, or to what extent, if at all, the said Church of Scotland, in Scotland, has recognized the minority or the remnant of the Presbyterian Church of Canada in connection with the Church of Scotland, whom the said Rev. Robert Dobie, Petitioner in this cause, claims to represent, and whom he designates by the name of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. I may say—and I am prepared to prove it by documentary evidence—that the ecclesiastical courts of Scotland have in one instance ignored the action 40 of the so-called Presbyterian Church of Canada in connection with the Church of Scotland.

Q. What instance was that?

(Petitioner objects to the above, as illegal evidence, the records of the said ecclesiastical court not being produced in this cause. Objection reserved by the parties.)

A. The instance of Dr. Snodgrass, who was inducted by the Presbytery of

—
*In the
 Superior
 Court.*
 —

No. 53.
 Deposition
 of Rev.
 John
 Jenkins,
 D.D.,
 produced by
 Respondents
 filed 9th
 July 1879.
 —continued.

Langholm to the parish of Canonby. The Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, so-called, deposed Dr. Snodgrass from the ministry, as appears from the record filed in this cause, to wit, the minutes of the Presbyterian Church of Canada in connection with the Church of Scotland. And I state here that the Presbytery of Langholm was duly and officially informed of such deposition by the Rev. Robert Burnet, the clerk of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, so-called, and that the said Presbytery was warned against inducting the said Dr. Snodgrass to the Parish of Canonby, as appears from a document which I hold in my hand and exhibit.

(Petitioner objects to the production of the said letter, inasmuch as it is not in the possession of the party to whom it purports to have been sent, if sent at all, and the witness is not a competent witness to prove the sending or the receipt of the said letter. Objection reserved by the parties.)

A. This document, I swear, is in the handwriting of the said Rev. Robert Burnet, and with which I have been familiar for many years, and is as follows :

“ London, Ontario, Dominion of Canada,
“ 2nd October, 1877.

“ To the Reverend Moderator of the Presbytery of Langholm :

“ Dear Sir,—I am directed by the Synodical Commission of the Presbyterian Church of Canada in connection with the Church of Scotland to represent to the Presbytery of Langholm that we have heard with deep regret of the presentation of the Very Reverend Principal Snodgrass to the parish of Canonby.

“ Principal Snodgrass, as a minister of this Church and head of Queen's College at Kingston, has made himself most active in attempting to obliterate the honored name of the Church of Scotland in this Colony—in fact, has almost succeeded. If it be a sin and a crime to deny the Church, he is verily guilty, and ought not to have the opportunity effectually to do in Scotland what he has done in Canada—overthrow the Church.

“ The Very Revd. Principal has been deposed from the office of the ministry in our Church. He was act and part in the consummation of the union recently accomplished between the Church here and the bitterest enemies of the Church of Scotland in any of the Colonies belonging to Great Britain.

“ I may add that the public opinion of the Free Church regarding Principal Snodgrass, (or what those of us attached to the Church of Scotland call ‘ the logic of events ’) has driven Dr. Snodgrass from his sphere of labor in Canada, as it has already driven many ministers lately belonging to the Church of Scotland from their congregations. We in Canada, Churchmen and Scottish Churchmen, would be recreant to our Church and to our principles did we not thus publicly protest against the induction of the Rev. Principal Snodgrass into any parish in Scotland.

“ In name and by authority of the Commission of the Presbyterian Church of Canada in connection with the Church of Scotland.

“ ROBERT BURNET, Clerk of Synod and of Commission.”

I shall be very glad to file a notarial copy of this document ; I prefer to keep the original.

The examination of this witness is adjourned.

RECORD.

*In the
Superior
Court.*

No. 53.

Deposition
of Rev.

John

Jenkins,

D.D.,

produced by

Respondents

filed 9th

July 1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

And on this tenth day of July, of the year aforesaid, re-appeared the said witness, Rev. John Jenkins, D.D., and continued his evidence, as follows:

Q. Can you add anything further that could throw light upon the said letter signed by the said Rev. Robert Burnet, which you produced, or about the action of the said Presbytery in reference thereto?

(Objected to, as irrelevant. Objection reserved by the parties).

A. I stated that the Presbytery of Lougholm inducted the said Rev. Dr. Snodgrass to the parish of Canonby, within its bounds, in spite of the letter and protest thus read, showing that it took no notice whatever of, perhaps, the most solemn action which the so-called Synod ever took in its quasi-ecclesiastical character.

Q. Will you state under what circumstances, according to the practice of the said Presbyterian Church of Canada in connection with the Church of Scotland, or according to Presbyterian practice generally, an ordained minister is deposed from the ministry?

(Objected to, as irrelevant. Objection reserved by the parties.)

A. A minister is never deposed, as far as Presbyterian practice and usage are concerned, from the office of the ministry except for gross immorality.

Q. Will you turn up to the minutes of the said so-called Synod, which were produced by the Rev. Gavin Lang, who was examined as a witness in this cause, 20 said minutes being marked Z1, and show whether or not the said so-called Synod deposed any other ministers from the office of the ministry besides the said Rev. Dr. Snodgrass?

(Objected to, inasmuch as the said minutes speak for themselves and are not subject to the interpretation of the witness. Objection reserved by the parties.)

A. Yes; I find my own name amongst the deposed ministers.

Q. Were there any others?

A. A good many.

Q. How many?

A. Too numerous to count just now.

Q. Was not the whole Church deposed?

A. In Exhibit Z1, page 14, I find that the following overture and resolution are recorded: "There was presented through the Committee on Bills and "Overtures an overture from the Presbytery of Glengarry, craving the Synod to "call over the names of the ministers who have withdrawn from this Church and "who joined the Presbyterian Church in Canada at the Victoria Skating Rink, "and declare them no longer ministers of this Church, and depose them from the "office of the ministry. After consideration and deliberation it was determined "to refer to the action taken by the Synod in eighteen hundred and forty-four, "under similar circumstances, and follow the example then set. The minutes of 40 "the twenty-third of September, eighteen hundred and forty-four were examined "and the course then taken ascertained, whereupon the Synod declared, as they "hereby do declare, that those ministers who have joined the Presbyterian Church "in Canada, thereby seceding from the Synod, (then follow the names) are no "longer ministers of the Presbyterian Church of Canada in connection with the "Church of Scotland, in Canada, and that they are hereby deposed from the "ministry of said Church." Further, the Synod agreed to record an expression

of the "grief of the members present at reading the names *seriatim*, and at declaring those who have seceded from our Church no longer ministers thereof, in terms of chapter six, section one, of the polity of this Church, and after the example of the Synod of eighteen hundred and forty-four, chapter six, of cases without process, providing, First, when an individual (commits) an offence in the presence of the Court, or when he voluntarily confesses his guilt, it is competent to the Court to proceed to judgment without process, the offender having the privilege of being heard. The record must show the nature of the offence, the judgment of the Court, and the reasons thereof. (See Acts and Proceedings of Synod, Montreal, Monday, September 23rd, 1844.)"

Q. With reference to said minutes you have just read and the example of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland with reference to the ministers which seceded from it in eighteen hundred and forty-four, will you state whether the said Presbyterian Church of Canada in connection with the Church of Scotland did depose from the office of the ministry those ministers who so seceded in eighteen hundred and forty-four, as insinuated in the said minutes?

A. They did not, as appears from the minutes filed in Court for eighteen hundred and forty-four.

20 Q. Had you and the said other ministers of the Church whose names were read over and mentioned in the said minutes, committed any of the offences which are suggested in the said minutes so as to make you deserving of being deposed as ministers?

A. We never had, and moreover we were never given an opportunity of being heard, if we had.

Q. Supposing that the said so-called Synod of the Presbyterian Church of Canada in connection with the Church of Scotland mentioned in the said Exhibit Z1, had the right to depose you and the others from the office of the ministry, would not the effect be to deprive you and them of all right to celebrate the 30 sacraments of the Church, and marriages, and officiate at baptisms, and perform generally the duties of an ordained minister?

A. The effect would be to deprive me of the exercise of all ministerial functions whatever, that is, if they had been a true Synod.

Q. Is it not true that if the said pretended deposition were legal and effective every marriage performed by you since, and every baptism, is null and void, and *ultra vires*?

A. Certainly. Every such act would be a criminal act on my part, and would be in defiance of the law of the land.

Q. Then I understand you to say that the ministers who seceded from the 40 said Presbyterian Church of Canada in connection with the Church of Scotland in eighteen hundred and forty-four, and who formed themselves into the Synod of the Presbyterian Church of Canada, were not deposed by the Synod of the first mentioned Church?

A. They were not.

Q. Will you kindly refer to the said Exhibit and mention what was done?

A. This is what was done—I am quoting from Exhibit 3,³ of Respondents, eighteen hundred and forty-four, page 20: "The Synod having called upon

RECORD.

In the
Superior
Court.

No. 53.

Deposition
of Rev.

John

Jenkins,

D.D.,

produced by

Respondents

filed 9th

July 1879.

—continued.

RECORD. "Presbyteries to report whether they had obtemperated the instructions of
 "Synod anent seceding ministers, the Presbytery of Kingston reported that they
 "had declared the Rev. John M. Roger, of Peterborough, Rev. Thomas Johnson,
 "of Cobourg, Rev. Henry Gordon, of Gananoque, Rev. Wm. Reid, of Grafton,
 "etc., to be no longer ministers of the Presbyterian Church of Canada in connec-
 "tion with the Church of Scotland, or of the Church of Scotland in Canada;"
 so that it is not true that there was any deposition.

—
*In the
 Superior
 Court.*
 —

No. 53.
 Deposition
 of Rev.
 John
 Jenkins,
 D.D.,
 produced by
 Respondents
 filed 9th
 July 1879.
 —continued.

Q. Was there not an obvious reason for your Synod taking that action and declaring them no longer ministers?

A. They had seceded, that is, they had not yielded to the will of the 10 majority.

Q. Had they not declared themselves they had left the Church?

A. Yes.

Q. That is a very different thing from deposing a minister from the ministry, is it not?

A. So it strikes me.

Q. You stated in the previous part of your examination that there was ministerial and church communion in part between the Presbyterian Church in Canada in connection with the Church of Scotland and the Church of Scotland in Scotland; will you kindly explain what you mean by stating that it was in 20 part?

A. This is what I mean; Ministerial communion would really imply that ministers of either Church would be accepted, in all respects, on the same terms as ministers of the other Church. This has not been the case in regard to the Presbyterian Church of Canada in connection with the Church of Scotland, and the Church of Scotland, in Scotland, because, though ministers ordained by the Church of Scotland were received as ministers in full standing by the Presbyterian Church of Canada in connection with the Church of Scotland, ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, ordained in Canada under the jurisdiction of the Synod, were not received as 30 ministers in full standing by any of the courts of the Church of Scotland; that is what I mean by the expression that our connection with the Church of Scotland as to ministerial communion was only ministerial communion in part. Therefore it was not a complete connection in that respect.

Q. In the Presbyterian Church in Canada are ordained ministers of the Church of Scotland, coming here, received and admitted in the same way as such ministers were before the union into the Presbyterian Church of Canada in connection with the Church of Scotland?

A. They are.

Q. And enjoy the same privileges as they did before the union?

A. Yes.

Q. By the terms of the basis of union which has been filed in this cause, is it true that it is left optional as to whether ministers shall adhere to the Confession of Faith in its entirety, as stated by one of the witnesses who was examined on the part of the Petitioner in this cause?

A. It is not true.

Q. Were you present at the Victoria Hall, or Skating Rink, in Montreal,

40

40

on the fifteenth of June, eighteen hundred and seventy-five, when the articles of union, the basis of union, and the resolutions thereto annexed, and which have been produced in this cause by the Rev. Mr. Mackerras, were signed ?

(Objected to as an attempt to prove the date of the instrument in question, which cannot be proved by verbal testimony. Objection reserved by the parties.)

A. I was present in the Victoria Rink on the morning of the fifteenth of June, eighteen hundred and seventy-five, during the time of the whole proceedings which took place in connection with the formation of the union in question in this suit.

Q. Did you see the said original articles, basis, and resolutions which the said Rev. Mr. Mackerras produced here in Court yesterday ?

A. Yes, I did.

Q. Will you kindly now examine the same ?

A. I will; I now hold them in my hands.

Q. Did you see the said original documents, which you now hold in your hands, signed by the parties whose names are appended thereto at the bottom thereof; and if so, please state when, and whether or not you can identify the parties who signed their names at the bottom thereof ?

20 (Petitioner objects to the question as an attempt to prove by verbal testimony the date of the signing of the said document and resolutions, and the signatures thereto. Objection reserved by the parties.)

A. I did see them signed on the said fifteenth day of June, eighteen hundred and seventy-five, in the said Victoria Skating Rink. I can identify the writing of the parties who signed their names, that is to say, I identify this as the document which was then signed in my presence by the four moderators of the united Churches.

Q. Did you know these four moderators ?

A. I did.

30 Q. And you are able to state that they were the moderators, as they represented themselves to be in that document of the said four united Churches ?

A. I am, for the reason that they appeared in the meeting as such, and were surrounded by the members of the several Synods who had made them moderators, and were acknowledged as such by the members of the several Synods of which they professed to be moderators, and in whose name they acted as moderators.

Q. How long before the said basis and articles of union were signed was the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland in session as a Synod in the said Victoria Skating Rink subsequent to their having left St. Paul's Church ?

A. Fully an hour.

Q. You are a member of the Temporalities' Board, and were at the date of the said union ?

A. I was and am still.

Q. Can you then state to what extent the said fund, managed by the Board, Respondents, has been relieved by death, of claims upon it since the said union ?

A. Re-coming at six per cent., the capital has been relieved by sixty-two

RECORD.

In the
Superior
Court.

No. 53.

Deposition
of Rev.

John

Jenkins,

D.D.,

produced by

Respondents

filed 9th

July 1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

thousand five hundred dollars, that is to say, that sixty-two thousand five hundred dollars would be required to be invested to pay the annuities of the ministers who have either died or removed from the country since the fifteenth of June, eighteen hundred and seventy-five.

Q. Have you read the petition filed by the Rev. Mr. Dobie in this matter and by which he commenced proceedings in this case?

A. It was served on me in the usual way, and I have read it.

Q. Will you kindly state whether the position which the Rev. Mr. Dobie asserts for himself in the said petition is correctly set forth therein, I mean the qualities which he has asserted for himself?

(Objected to as vague and not indicating what the position referred to is. Objection reserved by the parties.)

A. I state that the Petitioner falsely sets forth on the second page in said petition that he came to the Province of Lower Canada, now the Province of Quebec, as an ordained missionary of the Church of Scotland in the year eighteen hundred and fifty-two.

Q. I understand you to say he was not an ordained missionary?

A. He was not; he was a licentiate of the Church of Scotland simply.

Q. What is the position of a licentiate?

A. A licentiate is a man who is licensed by a Presbytery to preach the Gospel, simply.

Q. Do his functions end there.

A. His official functions end there.

Q. He has no right to celebrate the sacraments, or marry or baptize, or administer communion?

A. He cannot administer the sacraments; he is not a minister in the technical and official sense in which that word is understood by the Presbyterian Churches. As I have made a very serious statement in answering this question, I wish to refer to Respondents' Exhibit 3^d in proof thereof, which sets forth that Petitioner became an ordained minister, or that the Petitioner was ordained, not when he came to this country, but at Osnabruck, in the Presbytery of Glengarry, in the now Province of Ontario, on the seventh day of October, eighteen hundred and fifty-three.

Q. Can a man be ordained as a minister, according to Presbyterian practice and law more than once?

A. No, and never was.

Q. Can a man be ordained as a missionary more than once according to Presbyterian usage?

A. No, and when he is ordained as a missionary he is never re-ordained when he is inducted into a parish.

Q. Does not the term ordination mean ordination as a minister?

A. That is the only understanding that the term has, I never heard of a man ordained as a missionary who was again ordained when he became minister of a parish.

Q. Can you state where the Presbyterian Church of Canada in connection with the Church of Scotland is to be found to-day?

A. In the Presbyterian Church in Canada.

Q. Will you give your reasons?

A. My reason is that the Presbyterian Church of Canada in connection with the Church of Scotland, at the meeting of its Synod on the fourteenth of June, eighteen hundred and seventy-five, resolved, page 35 of the minutes of eighteen hundred and seventy-five, Petitioner's Exhibit "BBB": "The Synod resolves, and hereby does record its resolution, to repair, on the adjournment of the Court to-morrow, to the Victoria Hall, commonly known as the Victoria Skating Rink, the appointed place of meeting for the purpose of consummating the union with the aforesaid Churches and of forming one General Assembly to be designated and known as the General Assembly of the Presbyterian Church in Canada; and does at the same time declare that the united church shall be considered identical with the Presbyterian Church of Canada in connection with the Church of Scotland, and shall possess the same authority, rights, privileges, and benefits to which this Church is now entitled, except such as have been reserved by Acts of Parliament. And further, with the view of ratifying the act of union the Synod does empower its moderator to sign in its name the preamble, the basis of union, and also the resolutions adopted in connection therewith." As the moderator did thus sign the preamble and basis of union, and also the resolutions, the Presbyterian Church in Canada is, in my view, and according to this resolution, identical with the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. In the said petition the Rev. Robert Dobie states that he is still a minister of the Presbyterian Church of Canada in connection with the Church of Scotland; is that statement correct?

A. It is not correct in the sense in which it is set forth, or seems to be set forth, in the petition in question.

Q. Will you give your reasons for so stating?

A. My reason is that Mr. Dobie and the other members of the minority who refused to be governed by the resolution of the Synod to which I have just now referred, seceded from the Presbyterian Church of Canada in connection with the Church of Scotland and set up for themselves another Synod bearing the same name, which they had no right to take.

Q. And did this not also happen before the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland had joined the said union?

A. Certainly, while it was still in session.

Q. Since the union in question, how has the said Board, Respondents, been administering the said fund? I mean to say, did they get the authority of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland previous to union to administer it as they are now administering it?

A. They did.

Q. Were not the Acts of Parliament passed by the Local Legislatures of Quebec and Ontario in reference to union and to the said fund, submitted to the said Synod and approved of by it?

A. We are acting under the two-fold authority of the Acts of the former Province of Canada, and of Amendments by the Province of Quebec, and under the Act of the Province of Ontario, as well as under the authority of the Synod.

RECORD.

In the
Superior
Court.

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

Q. From eighteen hundred and seventy to eighteen hundred and seventy-four was any opposition made in the said Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, by the said Rev. Robert Dobie, or others, to the said union which was then under discussion, except as to points of detail?

(Objected as being proof to be made by record and not by the individual opinion of any witness. Objection reserved by the parties.)

A. Not to my knowledge, or according to my belief.

Q. Did the said Synod send delegates to the Assembly of the Church of Scotland to report upon the said union previous to the negotiations for said union having commenced, or was it only after they had been entered into for some time that they made such reports?

(Objected to, as being proof to be made by record and not by the individual opinion of any witness. Objection reserved by the parties.)

A. The Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, commenced negotiations for union before any deputation was sent on the subject to the Church of Scotland. The deputation sent in eighteen hundred and seventy-two was sent to make known to the Church of Scotland, or to make known to the Assembly of the Church of Scotland, that such negotiations were in progress.

Q. So that negotiations for union were commenced in the Presbyterian Church of Canada in connection with the Church of Scotland, without any reference to the Church of Scotland?

A. Without any reference to the Church of Scotland, just as the Synod was originally formed without any reference to the Church of Scotland.

Q. What was the object in sending these deputations occasionally from the Church here to the Church in Scotland?

A. The Church in Canada entertained, as expressed in the resolution of eighteen hundred and seventy-two, the greatest veneration for the Parent Church, and desired to do nothing that was so important without conveying to the General Assembly of the Church of Scotland all the information that it could convey in regard to the subject. It felt that it was due, that it was an ecclesiastical and filial duty, to make known the progress of the negotiations.

Q. Then it was in no sense with the view of obtaining the consent of the Church of Scotland to the union?

A. Not in any sense whatever.

Cross-Examined without waiver of objections.

Q. Of what Church denomination are you a minister?

A. Of the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. When did you last attend a meeting of Synod of said Church?

A. In the sense in which I have just stated, the Presbyterian Church of Canada in connection with the Church of Scotland and the Presbyterian Church in Canada, are identical, and is now governed by a General Assembly as well as by Synods. The General Assembly I attended last June; the Synod I attended last May.

Q. What was the name of the General Assembly you attended last June ?
 A. I have stated the General Assembly of the Presbyterian Church in Canada.
 The examination of this witness is adjourned ?

RECORD.

*In the
Superior
Court.*

No. 63.

Deposition
of Rev.

John
Jenkins,
D.D.,

produced by
Respondents
filed 9th
July 1879.

—continued.

And on this eleventh day of July of the year aforesaid, re-appeared the said witness, Rev. John Jenkins, D.D., and continued his evidence as follows :

Q. Are you a minister of the Presbyterian Church in Canada ?

A. I am.

Q. How does it happen that you are a minister both of the Presbyterian Church in Canada and of the Presbyterian Church of Canada in connection with the Church of Scotland ?

A. I am a minister not only of those two Churches, but I am also a minister of the Church of Scotland in Scotland. What I mean by being a minister of those two Churches is this, as I explained in my examination yesterday. That by law, that is to say, ecclesiastical law, to wit, by the resolution of the Synod yesterday quoted, the Presbyterian Church of Canada in connection with the Church of Scotland is identical with the Presbyterian Church in Canada.

Q. Is it not a fact that the said resolution which you pretend establishes the identity between the said two Churches, is simply a resolution passed under protest of the minority by the very persons who seceded from the Presbyterian Church of Canada in connection with the Church of Scotland and went out from the place they were then assembled into another building, to meet other bodies, to constitute the Presbyterian Church in Canada ?

A. I make no pretension, I state a fact, to wit, that the Presbyterian Church of Canada in connection with the Church of Scotland, as it had a right to do, did retire from its place of meeting to another place of meeting, and did transact important business in that other place of meeting previously to the consummation of the union which is referred to in this cause.

Q. Referring to the question last put to you, will you now answer : Is it not a fact, that the motion declaring the identity is simply a motion carried by the majority who went out, as you stated, under the protest of the minority ?

A. I don't think it is a fair way of putting the question in view of the fact that this was a resolution which was the culmination of deliberation and submission to Presbyteries and to Kirk-sessions during the previous four or five years on the part of the said Synod.

Q. Will you now endeavor to answer the question asked you on this subject, namely, whether the resolution you have referred to declaring the identity of the Presbyterian Church of Canada in connection with the Church of Scotland with the Presbyterian Church in Canada, is not a resolution carried by the majority who united with certain other persons to form the Presbyterian Church in Canada, and carried under the protest of the minority of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland ?

A. It is.

Q. What was the important business transacted at the alleged meeting of the Synod of the Presbyterian Church of Canada in connection with the Church of

RECORD. Scotland in the Victoria Rink on the fifteenth of June, eighteen hundred and seventy-five, prior to the alleged consummation of union ?

*In the
Superior
Court.*

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

A. It was constituted with prayer.

Q. Is it not a fact that after being so constituted in the said Victoria Skating Rink, all those who had left St. Paul's Church to go there for the purposes of consummating said union, simply waited until the time arrived for signing the articles of union by the moderators ?

A. Certainly not; previous to the signing of the articles of union several important matters were attended to, or transacted by the four Synods through their officials separately or jointly; that is to say, praise was offered, the Scriptures were read, prayer was offered by, I think, more than one of the moderators, but of this I am not sure.

Q. Then the important business which your Synod had to perform, after being constituted, as you allege, by prayer, was business connected with and preliminary to the consummation of union, and not specially appertaining to your Synod and apart from said union ?

A. It was business taken up according to resolution passed by the Synod on the fourteenth day of June, the precise business thus agreed to be done or transacted and no other.

Q. But all connected with union, was it not, and no other ?

A. All bearing upon union according to the resolution of the Synod which had been previously adopted; that is to say, on the fourteenth of June.

Q. Can you specify one particle of other business performed by the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, at its session in said Victoria Rink, on the fifteenth of June, eighteen hundred and seventy-five, that was not entirely connected with union ?

A. I have already stated that it was entirely connected with union and with no other.

Q. What time of the day was the union consummated by the signing of the alleged articles of union ?

A. I am not able to state.

Q. Are you able to state what time those who remained in St. Paul's Church adjourned therefrom ?

A. I am not.

Q. You understand, by the last question, I refer to the minority which remained ?

A. I do.

Q. Were there not many meetings of Synod in the early stages of the Presbyterian Church of Canada in connection with the Church of Scotland, regularly held, at which a less number than fifteen members of Synod was present ?

A. I am not aware; but after the passing of the standing order already referred to, in reference to a quorum of Synod, I should think not.

Q. You have referred to powers judicial and legislative of the Synod in your examination-in-chief; do you pretend that the said Synod, to wit, the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, had any powers apart from those specified already, to be found in the Acts and Proceedings of the Synod of the Presbyterian Church of Canada in connection

with the Church of Scotland, as fully set out in the three volumes of Exhibit "BBB"?

A. For the most part the powers, or the jurisdiction and powers, of the Synod are thus set forth, that is to say, in the books to which you refer. But it seems to me that practice or precedent not unfrequently governed the Synod in the progress of both its judicial and legislative work.

Q. The precedents or practice referred to by you would, of course, be found in the said volumes, Exhibit "BBB"?

A. I think not necessarily, because the minutes of Synod do not at all times reveal the processes by which decisions are arrived at.

Q. Where would they be found, then?

A. In the practice of the Court.

Q. Do not the Acts and Proceedings of the Synod set out the practice with regard to particular events that come up for disposition before the Synod?

A. What I mean to say is, that the methods by which decisions are arrived at are not always prosecuted according to written law—not in the Synod nor in any other court. For example, much is left to the discretion of the moderator, very much, as to the way in which business is conducted.

Q. But the resolutions are embodied, are they not, in the said Acts and Proceedings?

A. The decisions of the Synod are thus embodied.

Q. You have stated in your examination-in-chief that the legislative functions of Synod are twofold—first, spiritual; second, secular; and as regards the secular functions, that the Synod has power bearing upon all matters of property relating to the Synod; please explain more fully what is meant by the phrase?

A. The Synod has supreme power in regard to the funds which it has gathered or established for the sustentation or partial sustentation of the ministry; for granting or providing for annuities for the widows and orphans of the ministers of the Church. The Synod's secular authority, or its authority over secular funds or moneys, also extends to the appointment of various collections for benevolent purposes. It takes cognizance of the outlay of these collections. The Synod also has power as a court of appeal, and sometimes in its original capacity over certain properties, such as manse and churches in certain parishes in the Church; that is to say, there are ecclesiastical properties held in parishes which cannot be disposed of, or transferred to other parties, without a formal vote of Synod signed by its moderator.

Q. With reference to the sustentation fund for the aid of ministers referred to in your answer, is it not a fact that that was a fund expressly created for the aid of ministers, and that express power regarding the disposition of it was reserved to the Synod?

A. The sustentation fund, to which I refer, is a fund that was established in the year eighteen hundred and sixty-nine, or seventy, for aiding in the support of the ministry, and it existed during those years that elapsed between that year and eighteen hundred and seventy-five.

Q. Expressly under the disposition of Synod, was it not?

A. Expressly under the disposition of Synod, created by the Synod, and expressly under the disposition of the Synod.

*In the
Superior
Court.*

No. 53.

Deposition
of Rev.

John

Jenkins,

D.D.,

produced by

Respondents

filed 9th

July 1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

Q. Are you of opinion that the property in question in this cause was property of the character you specify over which the Synod had power relating to its disposition; in other words, do you think the disposition of the funds and property in question in this suit was under the control of the Synod?

A. If you ask my opinion, I say yes.

Q. What is the authority for your opinion?

A. The authority for my opinion is this, that the Synod has always since the creation of the fund as a Church fund, claimed control, and exercised as well as claimed control, and controlled it during all the years until the year eighteen hundred and seventy-five, and indeed, until this present year, eighteen hundred and seventy-nine, by and with the consent, up to the year eighteen hundred and seventy-five, not merely of a majority of the Synod but its unanimous consent.

Q. Now, would not these claims of Synod you have referred to be referred to or embodied in the said Acts and Proceedings of Synod?

A. They would undoubtedly.

Q. Do you think the said Synod had power to alter the regulation by which certain of the commuturs received an allowance of four hundred and fifty dollars per annum from the said fund?

A. They never did alter it.

Q. Had they the power supposing they were so disposed?

(Objected to as not arising out of the cross-examination, and the opinion of the witness upon a point of law such as asked, not being decisive. Objection reserved by the parties.)

A. If you ask my opinion, I think they would, so long as vested rights were secured.

Q. Had the said Synod power to say to one of the said commuturs: We deem it wise in our wisdom that you shall receive an annual allowance of four hundred dollars instead of four hundred and fifty.

A. I have never considered that question.

Q. Will you now point out in the said minutes "BBB" your authority specifically for stating that the said Synod claimed to exercise control and authority over the funds in question in this cause?

A. I deem it to be proved by the terms of the Act 22 Vic., chap. 66, which was obtained at the instance of the said Synod, and which incorporated the Board for the management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland. This Act, as it seems to me, gives the Synod supreme control of the fund in question, for the reason that it appointed from year to year the members of the Temporalities Board, filling all vacancies. Moreover, no by-laws which such Board might pass or resolve upon were of force without submission to and authority of said Synod.

Q. Now, don't you think that it is rather lame reasoning to assume that because the Synod appointed the members of the Board that either the Board or the Synod, in consequence, had the power to change the destination of the fund, or to control it otherwise than according to the fundamental principles upon which it was originally constituted?

A. It may be legal to ask me my opinion as to what lame reasoning might be, or reasoning that is sound—that might be a very proper thing to ask; but this is what I say: whether they had the power to do this or not, they did it.

Q. Now, do you come to the conclusion that because the Synod exercised the power of naming the administrators of the fund, it implied any right, either on the part of the Synod or on the part of the administrators, to change the destination of the said fund?

(Objected to as illegal, the opinion of the witness not being decisive upon the question, which is a mere question of law. Objection reserved by the parties.)

A. I simply stated that it seemed to me the Act in question gave the Synod supreme control of the fund.

Q. Do you mean by supreme control of the fund that the Synod had power to alter the terms of the fundamental conditions under which the fund was constituted by the original commutants?

(Objected to, as illegal, the question being a question of law, to be determined by the resolutions under which said fund was obtained and handed over to the Synod, and by the minutes of said Synod, and the Act of incorporation of the said Board. Objection reserved by the parties.)

A. I have already stated that the Synod had no right to interfere, and never assumed the right to interfere, with vested interests.

Q. Are you of opinion that said Synod had the power to alter the terms of a trust fund created as a permanent endowment for the benefit of the Church?

(Objected to, as the powers of the Church in this respect are not to be determined, but by reference to the resolutions by which the Synod was authorized to commute the claims of ministers with the Government, and under which the said fund was handed over to the said Synod. Objection reserved by the parties.)

A. It seems to me, if I could turn it up, that the Synod did unanimously alter one of the terms, that is, as far as my memory serves me, namely, that, while the arrangement was that one hundred pounds a year should be given to all non-commuting ministers, yet that it changed that arrangement to this extent that whereas it was originally intended that every non-commuting minister in the Synod should have one hundred pounds a year from this fund, it passed a resolution giving only fifty pounds a year to all ministers who did not commute and were not specially privileged in the original arrangement of the fund.

Q. Are you prepared to say that that was an alteration of the terms of the trust fund, created by the commuting ministers in this cause?

A. It showed that the Synod felt that it had control over the fund, so far as to reduce the amount of stipend which it originally intended or created to give to the non-commuting ministers.

Q. Will you now take communication of the last question with a view to answering it directly?

A. Certainly, it was an alteration of the disposition of the fund, and that is all I claim it to be.

Q. Are you prepared to say that that was not an alteration which they were competent to make by the terms of the trust created in this cause?

A. Certainly they were competent to make it.

RECORD.

In the
Superior
Court.

No. 53.

Deposition
of Rev.

John

Jenkins,

D.D.,

produced by

Respondents

filed 9th

July 1879.

—continued.

RECORD.

—
In the
Superior
Court.
—

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

Q. Are you prepared to say that they were not competent to make it by the terms of the trust created in this cause, and therefore that their making it was no interference with the terms of the trust?

(Objected to, as illegal, it being an attempt to elicit an opinion of law from the witness, and as not arising out of the examination-in-chief. Objection reserved by the parties.)

A. It seems to me that it was an alteration of the terms of the trust, or a change of the terms.

Q. Are you prepared to say positively that it was an alteration of the terms of the trust?

A. I decline to state positively on the ground that it is a question of law which I, as a witness in this cause, ought not to be expected to answer.

Q. Is it not a fact that your knowledge on this whole subject of the Clergy Reserves, and the constitution of the fund created by the commuting ministers, is not very full at the present time?

(Objected to, as illegal, the question of the Clergy Reserves having not been gone into in the examination-in-chief. Objection reserved by the parties.)

A. I have not given full attention to the study of this subject which I have to the subjects that were brought out in my examination-in-chief yesterday.

Q. I understood you to state in your examination-in-chief that there was no connection between the Church of Scotland and the Presbyterian Church of Canada in connection with the Church of Scotland?

A. You must refer to my answer. Did I say so.

Q. What is your opinion on that subject now?

A. My opinion on that subject is what I stated yesterday, that the Church of Scotland and the Presbyterian Church of Canada in connection with the Church of Scotland never had any integral connection—I would say organic.

Q. Is it not a fact that the Presbyterian Church of Canada in connection with the Church of Scotland was, to all intents and purposes in this country until the time of the union in question, regarded as the Church of Scotland in this country?

A. It may have been so regarded by some, but by very many of its own members it was not so regarded.

Q. Was it not so regarded by yourself?

A. It was not.

Q. Will you now take communication of a pastoral letter addressed by you in your capacity as moderator of Synod and signed by you, "John Jenkins, D.D., Moderator of Synod" to the Kirk-sessions and congregations of the Presbyterian Church of Canada in connection with the Church of Scotland, commencing, "Beloved Brethren," herein filed as Petitioner's Exhibit Z6, and state whether you did not write and address to said "Beloved Brethren," when speaking of the Presbyterian Church of Canada in connection with the Church of Scotland, the following amongst other sentences:—"The progress and present position of the Church of Scotland in this country are largely due to those ministers who, in the year eighteen hundred and fifty-four, surrendered, of their own free-will, a part of their share in the Clergy Reserve Fund for the sake of providing for each of their successors in the ministry a small endowment?"

(Respondents object to the question as endeavoring to elicit the opinion of the witness as to the nature of the connection between the Presbyterian Church of Canada in connection with the Church of Scotland and the Church of Scotland, which is one to be determined by documentary evidence which has already been pointed out. Objection reserved by the parties.)

A. I did write this pastoral letter, the expression does occur in it and is correctly quoted. The expression here is used popularly and has no legal or ecclesiastical force, for you will see that I could not have referred in my letter to the legal title of the Presbyterian Church of Canada in connection with the Church of Scotland, for I used the expression for brevity's sake as well as because the Presbyterian Church of Canada in connection with the Church of Scotland was often called the Church of Scotland in this country.

Q. Are you prepared to deny that it was not by reason of the identity and connection of the Presbyterian Church of Canada in connection with the Church of Scotland, with the Church of Scotland, that it, to wit, the Presbyterian Church of Canada in connection with the Church of Scotland, as a branch of a State Church, became entitled with the Church of Scotland to participate in the benefits that were derived from the Clergy Reserves in this country?

(Objected to as not arising from the examination-in-chief no reference having been made in such examination-in-chief to the matters asked about in this question. Objection reserved by the parties.)

A. My understanding is that the fact of the Presbyterian clergy in this country being "Protestant clergy" was the chief ground and the true ground on which they had any claim to the Clergy Reserve money.

Q. Do you base that understanding on your own opinion merely, or are you prepared to support it by authority?

(Objected to, as not arising from the examination-in-chief, no reference having been made in such examination-in-chief to the matters asked about in this question. Objection reserved by the parties.)

A. I base it on the letter which was transmitted from the Colonial Office in London to Sir John Colborne, Lieutenant-Governor of Upper Canada, containing a suggestion "That the whole of the Presbyterian Clergy of the Province should form a Presbytery or Synod, and that each Presbyterian minister who is to receive the allowance from government should be recommended by that body..... By this arrangement the whole of the Presbyterian Clergy of Upper Canada would be placed upon the same footing with respect to the assistance afforded by government towards their support." It seems to me, therefore, that the Imperial Government contemplated that Presbyterians, whether belonging to the Church of Scotland or not, residing in Upper Canada, had a claim to such Government allowance.

Q. Now, is it not a fact that you have just cited from a letter dated October 6th, eighteen hundred and twenty-six, being some five or six years anterior to the time when the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland was formed?

A. Certainly. In giving the preceding answer I thought I had in my hand Respondents' Exhibit 33. I find, however, it is not so. What I intended to quote from was Exhibit 3,3 pages 13 and 14, the letter addressed by Sir George

RECORD.

In the
Superior
Court.

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

RECORD. Murray to Sir John Colborne, dated Downing Street, first of August, eighteen hundred and thirty, in which occur the following words: "I have the honor
 "to acknowledge the receipt of your dispatch of the twenty-fifth January, enclosing the copy of the memorial from the Presbyterian ministers of Upper Canada,
 "not in direct connection with the Church of Scotland, praying that they may
 "be considered entitled to share the allowance granted to the ministers of the
 "Church of Scotland from the funds of the Canada Company by Lord Bathurst's
 "dispatch of the sixth October, eighteen hundred and twenty-six. It appears to
 "me very desirable, if such a measure could be accomplished, that the whole of
 "the Presbyterian Clergy of the Province should form a Presbytery or Synod, 10
 "and that each Presbyterian minister who is to receive the allowance from government, should be recommended by that body in like manner as the Roman
 "Catholic Priests who receive assistance from Government are recommended by
 "the Catholic Bishop. By this arrangement the whole of the Presbyterian Clergy
 "of Upper Canada would be placed upon the same footing with respect to their
 "immediate connection with the Government of the Province as with respect
 "to the assistance afforded by Government towards their support; whereas
 "under the present plan the Government has indirect connection with a part only
 "of the Presbyterian body in Upper Canada to the exclusion of the remainder.
 "You will therefore consider yourself authorized to consult with the leading 20
 "members of the Presbyterian body in Upper Canada as to their disposition to
 "adopt a union of the nature which I have suggested in this dispatch and report
 "to me on the subject."

Q. Notwithstanding, is it not a fact that the date of Sir George Murray's letter is about a year preceding the date when the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland was organized?

A. It is; the letter in question was dated on the first of August, eighteen hundred and thirty, and the Synod was formed on the eighth of June, eighteen hundred and thirty-one.

Q. Now, is it not a fact that after the said Synod was formed for about 30
 nine years, the other Presbyterian Clergy in Upper Canada which gave in their adherence to what was known as the United Synod of Upper Canada, came into and joined with the Presbyterian Church of Canada in connection with the Church of Scotland under the name of the Presbyterian Church of Canada in connection with the Church of Scotland and accepted the standards of the Church of Scotland?

A. It is, but that does not impugn the authority of the statement I made that the Government regarded both classes of Presbyterians in Upper Canada to have a claim on Government moneys.

Q. Now, to get over the gravamen of the reason that moved or induced the 40
 Imperial authorities to grant the right to the Presbyterian Church of Canada in connection with the Church of Scotland to participate in the benefit of the Clergy Reserves, is it not a fact that the Imperial Statute 3 and 4 Vict., chap. 78, section 5, now placed before you for your perusal, expressly indicates and styles those of the Presbyterian body who would be entitled to benefits concurrently with the Church of England, in certain proportions from the Clergy Reserves, as "the Church of Scotland"?

(Objected to, as illegal, the statute in question being a public Act which speaks for itself, and besides, as not arising out of the examination-in-chief. Objection reserved by the parties.)

A. It does thus speak.

Q. You referred in your examination-in-chief to the fact that Mr. Black, of the Presbyterian Church in Canada, and Dr. Snodgrass of the Presbyterian Church in Canada, were received as ministers of congregations in Scotland in connection with the Church of Scotland; do you mean to imply by that that the fact of such ministers being so received, implied any specific identity between the Presbyterian Church in Canada, and the Church of Scotland in Scotland?

A. I mean that it implies the same identity with the Presbyterian Church in Canada as it did with the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. Are you prepared to deny that a minister of the Presbyterian Church of Canada in connection with the Church of Scotland, as now constituted, would be refused a parish in Scotland, if he were a man in good standing, and received a call to it?

A. Do you mean the so-called Synod of the Presbyterian Church of Canada in connection with the Church of Scotland?

Q. I mean the Presbyterian Church of Canada in connection with the Church of Scotland, as now constituted, and not a fictitious Presbyterian Church of Canada in connection with the Church of Scotland, ashamed to avow itself, and existing under another name.

A. I know of no Presbyterian Church of Canada in connection with the Church of Scotland entitled to use that name but the Presbyterian Church in Canada, which, as I have stated in my evidence, is identical with the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. Then, is it not a fact that you, in your view, go further than the Church of Scotland itself does, which, in the extracts from the Principal Acts and Proceedings of the Church of Scotland, which you yourself have given in your examination-in-chief recognized the minority existing under the name of the Presbyterian Church of Canada in connection with the Church of Scotland, a fact that is further evidenced by the letter of the Rev. R. H. Muir, convener of the Colonial Committee of the Church of Scotland, and addressed to the Rev. Gavin Lang, convener of the Committee on Correspondence of the Presbyterian Church of Canada in connection with the Church of Scotland in this country, and during this year, with regard to certain ecclesiastical matters in connection with the Church of Scotland, which letter introduced to the Rev. Gavin Lang, as such convener, the Rev. Mr. Sprott, a delegate from the Church of Scotland to the Presbyterian Church of Canada in connection with the Church of Scotland.

(Objected to, as immaterial to the issues in this cause, the statement as to whether the Church of Scotland in Scotland has given the recognition mentioned in the question being entirely unimportant and irrelevant to the issues herein. Objection reserved by the parties.)

A. I do go further. The opinion of the Church of Scotland does not alter my opinion in this regard, if they have thus recognized it.

Q. Do you know whether the Church of Scotland has granted pecuniary

RECORD.

*In the
Superior
Court.*

No. 53.

Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

RECORD. aid to the Presbyterian Church of Canada in connection with the Church of Scotland, to wit, the body to which the Petitioner belongs, since the fifteenth of June, eighteen hundred and seventy-five?

*In the
Superior
Court.*

(Objected to, as irrelevant. Objection reserved by the parties.)

A. It has.

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

Q. Is it not a fact that the Petitioner in this cause would be eligible to be received by a parish in Scotland, and is eligible to be a minister of the Church of Scotland, provided he received a call to a parish there and that the call went through the formalities as usual in such matters, in Scotland.

(Objected to, as illegal and irrelevant. Objection reserved by the parties.) 10

A. I have no doubt, if he carried with him the usual Presbyterial certificate.
Q. Have you any doubt about his ability to carry with him the usual Presbyterial certificate?

A. That depends upon his conduct within the bounds of the Presbytery in which he resides up to the time of his leaving the Presbytery. That is what I mean by Presbyterial certificate.

Q. Do you know anything to prevent him from procuring and carrying with him such certificate?

A. Not in the least. Every man who goes to Scotland in these circumstances has to carry with him a Presbyterial certificate. 20

Q. Now, Dr. Jenkins, it so happens, in the course of human events, that clergymen frequently go from one denomination to another, does it not?

A. Yes.

Q. Now, you yourself were once a minister of the Wesleyan Methodist body, were you not?

A. I was.

Q. For how many years?

A. From eighteen hundred and thirty-seven to eighteen hundred and fifty-three.

Q. From the Wesleyan Methodist body you yourself, as a minister, were 30 received into the American Presbyterian Church of the United States, were you not?

A. Into the General Assembly of the Presbyterian Church of the United States.

Q. And from that General Assembly of the Presbyterian Church of the United States you again were translated to another Presbyterian body in England, were you not?

A. I was received as a Presbyterian minister from the Presbytery of Philadelphia by the Presbytery of London in the English Presbyterian Church.

Q. And you were subsequently received as a minister of the said English 40 Presbyterian Church into the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. I was.

Q. And you also were received as a minister of the Church of Scotland?

A. I was.

Q. And what church are you now a minister of?

A. I told you yesterday.

Q. You told me to-day also that you were a minister of the Presbyterian Church in Canada?

A. Of the Presbyterian Church of Canada in connection with the Church of Scotland, in the sense in which I explained that answer yesterday, namely, that the Presbyterian Church in Canada is identical with the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. Now, supposing you went to Scotland as a delegate again from the body that you are now connected with under its present name, the Presbyterian Church in Canada, do you think that your certificate and credentials would represent you as a minister of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. It would not.

Q. Then, is it not a fact, apart from any reasoning which you may choose to apply to it, that you are *de facto*, no matter what rights that may imply, purely and simply and nothing else but a minister of the Presbyterian Church in Canada?

A. It is not; because I am a minister of the Church of Scotland, in Scotland, and am eligible to occupy the position of a parish minister in Scotland?

Q. Were you ever ordained as a minister of the Church of Scotland?

A. No; but by special Act of the General Assembly of the Church of Scotland, Act XV, as set out in the Principal Acts of the said Assembly for the year eighteen hundred and seventy-one, "The General Assembly enacted that the Rev. Dr. Jenkins, minister of St. Paul's, Montreal, be admitted to the full status of an ordained minister of this Church."

Q. Is it not a fact, that the reason you were so admitted was that you were a distinguished clergyman of the Presbyterian Church of Canada in connection with the Church of Scotland treated as a branch of itself?

A. Certainly.

Q. You have taken a pretty lively interest in this action, have you not?

A. A little.

Q. A good deal?

A. Yes, a good deal.

Q. You are a Respondent in this case?

A. I am.

Q. You have been here from time to time, not only during your own examination, but during the last three weeks while other witnesses were being examined?

A. A fortnight, perhaps.

Q. Of course you desire the petition to be defeated?

(Objected to, as illegal. Objection reserved by the parties.)

A. I desire to gain my own case.

Q. You desire him to lose, which is the converse?

A. No, it is not, I do not desire him to lose in the sense of losing any vested right he has in the fund in question.

Q. But according to your view of his rights you desire that he should not succeed in this suit, do you not?

A. I don't exactly understand the legal bearing of that question.

In the
Superior
Court.

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

Q. You know what losing a suit means?

A. I have some idea.

Q. Now, do you wish that he should lose this suit?

A. I wish the Respondents might gain it. It is so unusual a question that it seems to me as though it were something intended to—you will excuse my saying so—trip me up, I don't want to be entrapped, and I don't intend to be.

Q. The long and the short of it is that the question affects your credibility as a witness?

A. I am deeply interested in this and have gone into it with a desire to succeed. 10

Q. When did you last have a meeting of the Temporalities Board, Respondents in this cause?

A. I do not know; but we have had no meeting of the Board lately. Our last regular meeting of the Board was previously to the injunction that was served on the Board.

Q. Long previously?

A. I do not know. It was meeting in regular course up to the time of the injunction, which was served on the Board at a meeting, and the moment the injunction was served, as far as I remember, the Board rose, because it felt that in face of that injunction it could not transact any business. 20

Q. You remember the circumstance of an injunction being served on the Board at a meeting?

A. I do.

Q. You have not had a meeting of the Board since then?

A. I am not sure; but referring to the books I can tell you. There may have been another meeting, but I am not sure. But, at any rate, we have never met in defiance of the injunction.

Q. Now, you say that this Temporalities Fund has been relieved by deaths or removals of the beneficiaries, since eighteen hundred and seventy-five, to the extent of a capital sum of sixty-two thousand five hundred dollars? 30

A. Yes; calculated at six per cent.

Q. How many removals of beneficiaries have there been?

A. I do not know. I cannot tell now; but I made up with Mr. Mackerras a list with the sums opposite each name, and with great care added the total amount and calculated the capital sum.

Q. Are you aware that the deaths and removals since eighteen hundred and seventy-five have effected to you, the Board, a saving of the capital sum invested, of sixty-two thousand five hundred dollars, and that notwithstanding, the funds in the hands of the Respondents on the fifteenth day of June, eighteen hundred and seventy-five, have been depleted, or deteriorated, or reduced to the extent of from seventy-four to seventy-five thousand dollars in the interval? 40

A. I am not aware of the precise sum, but I know it has been depleted or reduced to some amount between seventy and seventy-five thousand dollars, that is, to the best of my knowledge.

Q. You do not pretend, by stating that the fund has been relieved for the reason stated to the extent of sixty-two thousand five hundred dollars, as you have explained, that this circumstance having arisen from deaths or removals over

which the administrators of the Board had no control, that it implies any want of skill in administration on their part?

A. I do not pretend that it implies any want of skill.

Q. In skill in administration on their part?

A. Certainly not.

Q. Now the Petitioner styles himself in his petition a minister of the Presbyterian Church of Canada in connection with the Church of Scotland; are you prepared unequivocally to deny that pretention?

A. I deny that he is a minister of the Presbyterian Church of Canada in connection with the Church of Scotland as that Church existed prior to the union of eighteen hundred and seventy-five. I deem the Synod of the so-called Presbyterian Church of Canada in connection with the Church of Scotland to be an entirely new body comprehending the minority.

Q. And that is the reason you deny he is a minister of that Church?

A. That is the sense in which I deny he is a minister, and the only sense.

Q. Now, you state in your examination-in-chief that the Synod decided all matters by a vote of the majority; do you pretend that the Synod could decide by a vote of any majority a question upon which it was not competent to adjudicate?

(Objected to, as illegal and absurd. Objection reserved by the parties.)

A. It is self-evident.

Q. What is self-evident?

A. It is self-evident that no Synod by a majority could do anything which it was incompetent to do.

Q. Are you of opinion that the said Synod, even with an overwhelming majority, could affect the private and civil rights of any member of it provided the decision of the Synod was not legally right according to the law of the land?

(Objected to, as illegal, as trying to elicit the opinion of the witness upon a legal question. Objection reserved by the parties.)

A. It seems to me not.

Re-Examined without waiver of objections.

Q. When you stated in your cross-examination in answer to the following question: "Is it not a fact that your knowledge of this whole subject of the "Clergy Reserves and the constitution of the fund created by the commuting "ministers, is not very full at the present time" that "I have not given that "full attention to the study of this subject which I have to the subjects that were "brought out in my examination-in-chief yesterday," what subject did you specially refer to?

(Objected to, the subject being plainly indicated in the question, namely, the subject of the Clergy Reserves, and the subject of the constitution of the fund. Objection reserved by the parties.)

A. I specially referred to the constitution of the fund, and I meant that I had not such a detailed and accurate knowledge of the resolutions of the Synod creating the fund as would enable me, without considerable searching, in other words, as would enable me without many references to answer the questions that were proposed or that might be proposed on those details.

*In the
Superior
Court.*

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 53.
Deposition
of Rev.
John
Jenkins,
D.D.,
produced by
Respondents
filed 9th
July 1879.
—continued.

Q. When you stated in your cross-examination that you were admitted to the Church of Scotland in Scotland because you were a distinguished clergyman of the Presbyterian Church of Canada in connection with the Church of Scotland which the said Church of Scotland treated as a branch of itself, in what sense did you use the expression "branch of itself?"

A. In the sense in which in my examination-in-chief I used the word yesterday, namely, not as an integral part, but as having identity of origin and of ministerial communion.

Notes.

In reference to my answer on page 48 of the preceding deposition (at page 10 295 of this record), beginning: "It may be legal to ask me my opinion," I wish to mention that I did not mean it to be inferred from my affirmative answer that the Synod had altered the destination of the Temporalities Fund; what I really meant to say was, it had altered the principle of its distribution.

To the last answer in my deposition to be found immediately above on this page I wish to add, that though received by the General Assembly of the Church of Scotland in Scotland on the ground of being a minister of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, I have no doubt that had I applied for admission into the Church of Scotland at the time that I applied for admission into the Presbyterian Church of Canada in 20 connection with the Church of Scotland, and had submitted to the General Assembly aforesaid the testimonials which I submitted to the Church in Canada, I should have been received with as great cordiality as I was on the occasion referred to.

And further deponent saith not, and this deposition having been read to him he declares it to contain the truth.

S. A. ABBOTT, Stenographer.

Schedule No. 69.

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.

On this fifteenth day of July, in the year of our Lord one thousand eight hundred and seventy-nine, personally came and appeared Reverend Robert Campbell, 30 minister of St. Gabriel's Church, in the city and district of Montreal, aged forty-four years, a witness produced on the part of the Respondents, who being duly sworn, depose and saith: I am not related, allied or of kin to, or in the employ of any of the parties in this cause.

Q. How long ago is it since you were ordained to the office of the ministry, and in connection with what Church were you ordained?

A. I was ordained in April, eighteen hundred and sixty-two, to the office of the ministry in the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. Have you been a minister in active duty ever since?

A. I have.

Q. Have you had any experience in attending the church courts of the said Church, and have you held any official position at any time in connection with said church courts, and state what?

A. I have attended the meetings of the supreme court of the Church every year since except once. I was also clerk of our Presbytery for many years—of the Presbytery of Guelph in Upper Canada.

Q. Have you had any opportunities for making yourself acquainted with the acts and proceedings of the said Church, and its polity, rules and regulations?

A. I have had many opportunities besides my official position as clerk. As clerk, being the legal adviser to the Presbytery, made it necessary for me to familiarize myself with the regulations and processes of the various church courts.

Q. Did you ever have your attention called particularly to the question of the Clergy Reserve Fund?

A. When I went to college in eighteen hundred and fifty-three with a view to study for the ministry, the subject was very much agitated both in the State and in the Church, and my attention was called to it at that stage, and until up to the time when the commutation was effected, in eighteen hundred and fifty-five, I was quite familiar with the question.

Q. Can you point out and explain how it was, or by virtue of what authority, the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland came to have claims upon the proceeds of the said Clergy Reserves previous to the time when they commuted their claims through the Synod of the said Church in eighteen hundred and fifty-five?

(Objected to as a matter of record to be determined by the acts and proceedings of the said Church and the Statutes, Imperial and Provincial, in that behalf. Objection reserved by the parties.)

A. The Act 14 George III, chap. 83, passed in seventeen hundred and seventy-four, granted special privileges to the French Roman Catholics in Canada.

(Petitioner objects to the witness reading his testimony from written manuscript which he holds in his hands. Witness declares he is not reading his testimony, and parties reserve objection.)

A. As a counterpart in the way of privilege, the Act 31 George III, chap. 31, clauses 35 to 42, granted privileges to a Protestant clergy in Canada, the Church of England being specially named in the Act. For twenty-seven years afterwards, as far as any record appears, no other denomination than the Church of England claimed a share in the fund created by said Act, although, as appears from the minutes of Synod of eighteen hundred and thirty-one, page 19, Respondents' Exhibit 3,3, the only clergymen of the Church of Scotland resident in Upper Canada, "frequently and earnestly represented to the Executive Government of the Province, the impropriety of creating any distinction between two Churches having equal claims, and the injustice of extending to one a support " which was withheld from the other," the two Churches, as appears from the context, being the Church of England and the Church of Scotland. The first claim of which I can find record on the part of Presbyterians in Canada to share in the benefits of this fund, was by the Presbyterian inhabitants of the town of Niagara and its vicinity. In the year eighteen hundred and nineteen, as appears in the correspondence relative to the Clergy Reserves ordered to be printed by the House of Commons in England, and which printed returns I now hold in my

RECORD.

In the
Superior
Court.

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.

—continued.

RECORD. hand and exhibit. The said reference is as follows: after stating who the petitioners were, they go on to say: "They therefore humbly pray that Your Excellency would take their peculiar case into consideration, and that you would be pleased to allow or grant to the Presbyterian congregation of the town of Niagara, the annual sum of one hundred pounds in aid, out of the funds arising from the Clergy Reserves, or any other fund at Your Excellency's disposal." This was contained in a petition to His Excellency, Sir Peregrine Maitland, Lieutenant-Governor of the Province of Upper Canada. This petition seems to have been the occasion of obtaining from the law officers of the Crown in England, an opinion as to the definite meaning to be attached to the term "Protestant Clergy," as appears from a passage in a dispatch from Lieutenant-Governor Maitland to Earl Bathurst, from which I quote: "This petition involves a question on which I perceive there is a difference of opinion, namely, whether the Act intends to extend the benefit of the Reserves for the maintenance of a Protestant clergy, to all denominations, or only to those of the Church of England. The law officers seem to incline to the latter opinion."

*In the
Superior
Court.*

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.

—continued.

The examination of the witness is adjourned.

And on this sixteenth day of July, of the year aforesaid, re-appeared the said witness, Reverend Robert Campbell, and continued his evidence as follows:— 20

A. The agitation on the part of ministers of the Church of Scotland to share in the proceeds of the Clergy Reserves was continued, notwithstanding the aforesaid opinion of the law officers of the Crown. This agitation was increased by the fact that the clergymen of the Church of England in Canada had been invested with the powers of an incorporation for the management of the Clergy Reserves, as well as by the famous petition of Dr. Strachan, with accompanying ecclesiastical chart, addressed to the Imperial Parliament, and dated twenty-second April, eighteen hundred and twenty-three. With reference to the claims of the Church of Scotland, Sir Peregrine Maitland, in a dispatch to Earl Bathurst, Secretary of State for the Colonies, December twenty-seventh, eighteen hundred 30 and twenty-three, a printed copy of which is contained in the said correspondence which I have already exhibited respecting the Clergy Reserves in Canada, used the following words: "The 31st George III, chap. 31, does not in any manner recognize or allude to the clergy of the Church of Scotland, and if they can be brought within its provisions, it is only on the ground that the general term, "Protestant Clergy," necessarily embraces them. But upon the same construction the clergy of all other Protestant denominations must be admitted, and there are several denominations in Upper Canada far more considerable in number of teachers and extent of congregations than the Church of Scotland." That the agitation was great during all this period is shown by a passage in the address of the Right Honorable C. Poulett Thompson, Lieutenant-Governor of 40 Upper Canada, in the year eighteen hundred and forty, as appears in the returns to the House of Commons aforesaid, under the title "Act relative to the sale of Clergy Reserves," which I quote: "I congratulate you most sincerely upon having thus terminated, so far as depends on your exertions, the agitation of a question which has now for nearly twenty years been a fruitful source of disagreement in the Legislature and of strife and contention amongst the people of

"this Province." The House of Assembly of Upper Canada took ground against favoring any one denomination more than another, in the year eighteen hundred and twenty-six, as appears in an address from the House of Assembly to the Queen's most Excellent Majesty, contained in the correspondence respecting the Clergy Reserves already cited: "We further most humbly represent most Gracious Sovereign, that the land set apart in this Province for the maintenance and support of a Protestant Clergy ought not to be enjoyed by any one denomination of Protestants to the exclusion of their Christian brethren of other denominations." In the year eighteen hundred and twenty-six the first payment from Government to Presbyterian ministers in Canada was ordered, as appears in a despatch from Earl Bathurst, Secretary of State for the Colonies, to Lieutenant-Governor Sir P. Maitland.

(Petitioner objects to the evidence of the witness as being entirely irrelevant to the issue and foreign to the question, and inasmuch as it cannot affect the ultimate finding of the Imperial and Canadian Legislatures with regard to the rights of the Church of Scotland or of the Presbyterian Church of Canada in connection with the Church of Scotland, and inasmuch, further, as the early and ill-considered opinions of the law officers of the Crown cannot prevail over the later and decisive opinions upon this subject which emanated in the Imperial Legislation referred to. Objection reserved by the parties.)

A.

"Downing Street, 6th October, 1826.

"Sir,—You will receive instructions from the Treasury for the payment from the funds to be derived from the Canada Company of the sum of £750 per annum for the salaries of the Presbyterian ministers, and a similar sum for the support of Roman Catholic priests. I deem it advisable that the allowances which may be granted to ministers of the Presbyterian persuasion in Upper Canada should be limited to persons who are natural born British subjects, who are in full communion with and who are acknowledged by the Kirk of Scotland, by whom they should be recommended to the Lieutenant-Governor for their appointments." From the first the contention of the ministers of the Church of Scotland was against the exclusive claims of the Church of England to monopolize the proceeds of the Clergy Reserves, as appears in the minutes of eighteen hundred and thirty-one, page 19 of Respondents' Exhibit 3,3; and also in the minutes of eighteen hundred and forty, page 42, in which is an address of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland to the General Assembly of the Presbyterian Church of the United States, containing the following: "We are also happy in being able to inform you that we have now been relieved from the embarrassments of a long and painfully agitated question—the question of the Clergy Reserves—with the details of which it is unnecessary to trouble you, but which produced and kept alive an evil spirit of jealousy and rivalry between our Church and the sister Church of England." The Church of Scotland enlisted on their side the co-operation of all the other Protestant denominations in Canada as against the exclusive claims of the Church of England, and amongst others, the ministers of the United Presbytery of Upper Canada, as appears in the petition of the ministers of the said Presbytery to the Right Hon. Sir George Murray, His Majesty's Principal Secretary of State for the

RECORD.

In the
Superior
Court.

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 54.

Deposition
of Rev.

Robert

Campbell,

produced by

Respondents

filed 15th

July 1879.

—continued.

Colonies, first September, eighteen hundred and thirty, in the correspondence respecting the Clergy Reserves aforesaid: "A few years ago the ministers in this country in connection with the Church of Scotland, who are much less numerous than your petitioners requested your petitioners to join with them in an application to His Majesty's Government for pecuniary assistance. They did so, and the signatures of their numerous congregations were attached to those petitions, as well as money forwarded to assist in sending home an agent to represent Presbyterian claims in general." Other bodies joined them, as appears in the dispatch of Sir P. Maitland to the Right Hon. W. Huskisson, fifteenth of December, eighteen hundred and twenty-seven, which, after speaking of the claim advanced by the ministers of the Church of Scotland in Canada, adds: "In this, too, they have had the still more hearty assent of the several dissenting sects."

The Church of Scotland sought to forward the rights of all other Protestants in Canada equally with their own to a claim to a share of the proceeds of the Clergy Reserves, as appears from the letter of Hon. W. Morris, agent for the Scotch Churches in Canada, to the Right Hon. Lord Glenelg, Secretary of State for the Colonies, the twenty-sixth of June, eighteen hundred and thirty-seven, contained in papers relating to the Churches of England and Scotland, ordered to be printed by the House of Commons in England. I quote: "I am free to admit that there are thousands of the inhabitants of Upper Canada who, though not members of either of the establishments, and therefore not by law entitled to enjoy a portion of those lands, as the Methodists for instance, are nevertheless a loyal and deserving class of Her Majesty's subjects and equally in need of some assistance to support their religious teachers." Further on he proposed: "The other third part or residue to be re-invested in Her Majesty for the support of such other denominations of Christians as Her Majesty's Government might feel disposed to protect and assist."

In eighteen hundred and twenty-nine the United Presbytery of Upper Canada petitioned the Right Hon. Sir George Murray to be allowed a share in the Clergy Reserves, as contained in the correspondence respecting the Clergy Reserves of Canada already cited and here produced, dated first September, eighteen hundred and thirty: "The petition of the ministers of the United Presbytery of Upper Canada humbly sheweth, that in the year eighteen hundred and eighteen a number of Presbyterian ministers, originally from different parts of Great Britain and Ireland, and at that time resident in different parts of the Province, being desirous of promoting the moral and religious prosperity of the Province, joined in forming the United Presbytery of Upper Canada, the fundamental principle of which was and still is, an adherence to the doctrine, acts, discipline and manner of worship of the Church of Scotland as set forth in the Westminster Confession of Faith." After speaking of the acknowledgment on the part of the Government of the claims of the ministers of the Church of Scotland in Canada to an allowance, they conclude: "Your petitioners do, therefore, most earnestly urge and entreat that their claims may be brought under the favourable consideration of His Majesty's Government, and such an allowance granted as they in their wisdom may deem meet." In a previous petition to Sir John Colborne, dated first September, eighteen hundred and twenty-nine,

the ministers of the United Presbytery of Upper Canada declare: "We consider
 "that we have strong and efficient claims entitling us to participate in any pro-
 "vision that is or may be hereafter made for the Presbyterian Clergy in this
 "Province." Testimony is borne to the character of the ministers of the said
 United Presbytery of Upper Canada, by Sir John Colborne in his dispatch of
 fourth September, eighteen hundred and thirty, to the Right Hon. Sir George
 Murray, contained in correspondence respecting the Clergy Reserves, Canada
 already cited and which I produce: "I have the honour to transmit to you a
 "memorial from the ministers of the United Presbytery of Upper Canada.....
 10 "....I beg to state that as the memorialists are some of the most diligent
 "ministers in the Province, and have under their charge numerous congregations,
 "it appears desirable for the interests of the large proportion of the population
 "with whom they are connected that they should not be excluded from any
 "future arrangement that may be made for the temporary support of the Pres-
 "byterian ministers."

The claims put forward by the Church of Scotland were in the name of all
 the Scottish people resident in Canada, as appears from the petition to the King's
 Most Excellent Majesty from the ministers of the Presbyterian Church of Canada
 in connection with the Church of Scotland, of date thirteenth June, eighteen
 20 hundred and thirty-one, contained in correspondence respecting the Clergy Re-
 serves, Canada, already cited, which I now show: "The claim of the Church of
 "Scotland and of all natives of that portion of your Majesty's dominions, is
 "founded upon the Act of Union between the two kingdoms;" and they urged
 their claim on the ground that they were a Protestant Clergy, as appears in the
 minutes of eighteen hundred and thirty-one, page 16, Respondents' Exhibit 3, 3,
 in an address to the General Assembly of the Church of Scotland, where the
 following passage occurs: "Your Venerable Assembly knows that there are many
 "external relations and interests of a Church which may be best watched over
 "by a General Court, and that amongst these the most interesting to the churches,
 30 "under the jurisdiction of the Synod, is their right to a share in the land set
 "apart for the maintenance of a Protestant Clergy." The United Presbyterian
 Synod was formed under the advice of Sir George Arthur in his despatch to
 Lieutenant-Governor Sir John Colborne, of first August, eighteen hundred and
 thirty, when he said: "It appears to me very desirable, if such a measure could
 "be accomplished, that the whole of the Presbyterian Clergy of the Province
 "should form a Presbytery or Synod, and that each Presbyterian minister who
 "is to receive an allowance from Government should be recommended by that
 "body. By this arrangement the whole of the Presbyterian Clergy of Upper
 "Canada would be placed on the same footing with respect to the assistance
 40 "afforded by Government towards their support." In a petition to the Right
 Hon. Lord Viscount Goderich, Secretary of State for the Colonies, the seventeenth
 of June, eighteen hundred and thirty-one, of the said ministers of the United
 Presbytery of Upper Canada, they state: "We have hitherto been known by the
 "name of the United Presbytery of Upper Canada, but owing to the increase of
 "our numbers, as well as the recommendation in Sir George Murray's dispatch,
 "we have this day formed ourselves into a Synod, to be called the United Synod
 "of Upper Canada." In this petition they again assert their right to a share in

RECORD.

*In the
 Superior
 Court.*

No. 54.
 Deposition
 of Rev.
 Robert
 Campbell,
 produced by
 Respondents
 filed 15th
 July 1879.

—continued.

RECORD. the Clergy Reserves. Their claim to pecuniary assistance from Government was recognized in the year eighteen hundred and thirty-two, as appears from a dispatch of Lord Viscount Goderich to Lieutenant-Governor Sir John Colborne, dated twenty-ninth of July, eighteen hundred and thirty-two, from which I quote: "I have to request that you will acquaint the Petitioners that His Majesty's Government will ever be ready to promote, as far as it is in their power, the interests of a Church so respectable in point of numbers and character as that which is represented by the United Synod of Upper Canada. I am therefore desirous of receiving your opinion as to the amount of pecuniary assistance which it would be proper to afford to the Presbyterian Church not in connection with the Kirk of Scotland." Lieutenant-Governor Sir John Colborne replying to the dispatch last cited, on the fifth of September, eighteen hundred and thirty-two, says: "I should recommend nine hundred pounds to be placed at the disposal of the Synod established by the Presbyterians in Upper Canada who are in communion with the Church of Scotland; nine hundred pounds at the disposal of the Roman Catholic Bishop, nine hundred pounds at the disposal of the British Wesleyan Conference, and six hundred pounds at the disposal of the Canada Methodist Conference." In a dispatch from Lord Goderich to Sir John Colborne, twenty-second of November, eighteen hundred and thirty-two, it is stated: "I have to acquaint you in reply that the Lords Commissioners of the Treasury have sanctioned, at my recommendation, the several grants which you proposed, and as I considered the memorial of the Presbyterian ministers not in connection with the Church of Scotland entitled to favourable consideration, I have also recommended that an allowance of seven hundred pounds should be made to them on your approval of the manner in which the grant is to be applied." The ministers of the United Synod of Upper Canada had under their charge communicants of the Church of Scotland, as appears from the letter of the Synod to the General Assembly's Committee on Colonial Churches, contained in minutes of Synod of eighteen hundred and forty, page 37, Respondents' Exhibit 3,3, from which I quote: "At a time when only one or two ministers from the Church of Scotland had settled in Upper Canada, several Presbyterian ministers from other bodies in the United Kingdom had emigrated hither, and had gathered under their care congregations composed, in no small proportion, of persons who originally belonged to our communion," meaning the communion of the Church of Scotland. On the same page from which I have just quoted the Synod acknowledged that the United Synod of Upper Canada "were placed on the same footing in respect to pecuniary aid as the ministers in connection with the Church of Scotland."

A Select Committee of the House of Commons in eighteen hundred and twenty-eight, appointed to report on the Civil Government of Canada, gave the following opinion as to the rights of parties to share in the Clergy Reserves, as contained in correspondence respecting the Clergy Reserves, Canada, in the returns already cited:—"The law officers of the Crown have given an opinion in favor of the rights of the Church of Scotland to such participation, in which your Committee entirely concur; but the question has also been raised whether the clergy of every denomination of Christians except Roman Catholics may not be included. It is not for your Committee to express an opinion on the accuracy

—
In the
Superior
Court.
—

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued.

" of the meaning which the words of the Act legally convey. They entertain
 " no doubt, however, that the intention of those persons who brought forward
 " the measure in Parliament was to endow with parsonage houses and glebe lands
 " the Clergy of the Church of England, at the discretion of the Local Govern-
 " ment; but, with respect to the distribution of the proceeds of the reserved lands
 " generally, they are of opinion that they sought to reserve to the Government
 " the right to apply the money, if they so thought fit, to any Protestant clergy."
 Notwithstanding this opinion, and other opinions previously obtained, it was held
 in the year eighteen hundred and thirty-five by the Select Committee of the
 10 Legislative Council of Upper Canada, in their Report, as appears in correspond-
 ence respecting the Clergy Reserves, Canada, already cited, " that upon the claim
 " of the Church of Scotland, or of any other religious community, granted upon
 " the legal operation of the statute, no decision has yet been pronounced by any
 " judicial authority empowered to determine the question."

The whole grant made to the Presbyterian Church of Canada in connection
 with the Church of Scotland, up to eighteen hundred and thirty-five, proceeded
 entirely from the bounty of the Crown, as appears from the dispatch of the Earl
 of Aberdeen to Lieutenant-Governor Sir John Colborne, of the twenty-second of
 February, eighteen hundred and thirty-five: " In sanctioning the present aug-
 20 " mentation of the Scotch Church in Upper Canada, I would remind you that
 " the whole grant proceeds from the bounty of the Crown, and that although it
 " would not, on any light grounds, be curtailed or withdrawn, yet it may be well
 " to intimate to the Presbytery that His Majesty's Government reserves its right
 " of revising the grant at any future time, should the circumstances of the Colony
 " render such a proceeding advisable." In a dispatch from Lord Glenelg to Sir
 Francis B. Head, of the nineteenth of December, eighteen hundred and thirty-
 six, the following passage occurs: " His Majesty's Government would be most
 " anxious to co-operate with the Provincial Legislature in any measure, having
 " this object in view, and which should extend not only to the Church of Scot-
 30 " land, but to the other large communities of Christians within the Province, an
 " assistance proportioned to their growing wants and demands." In a dispatch
 from Lord Glenelg to Sir F. B. Head, of the seventh September, eighteen hun-
 dred and thirty-seven, the following passage occurs: " The inhabitants of the
 " Australian colonies belong almost exclusively to the Churches of England, of
 " Scotland, and of Rome; but in the Canadas the case is different. There are
 " in this Province many other persuasions of Christians, forming large communi-
 " ties, each superintended by a controlling body. The exclusion of these com-
 " munities from the benefit of a public provision made for religious purposes
 " would be quite inconsistent with the design of Her Majesty's Government."

40 In a dispatch of the twenty-fifth December, eighteen hundred and thirty-
 seven, Lieutenant-Governor Sir George Arthur, casts doubts on any special
 claims of the ministers of the Church of Scotland in Canada to the proceeds of
 the Clergy Reserves, in the following passage: " It is undeniable that whilst it
 " is doubtful what the claims of the Church of Scotland may be upon the
 " Reserves, a most munificent provision intended for the Church of England is
 " henceforth proposed to be shared by her only in common with other com-
 " munities."

RECORD.

In the
 Superior
 Court.

No. 54.
 Deposition
 of Rev.
 Robert
 Campbell,
 produced by
 Respondents
 filed 15th
 July 1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1874.
—continued.

Up to twenty-sixth of February, eighteen hundred and thirty-eight, the ministers of the Church of Scotland, the ministers of the United Synod of Upper Canada, the Wesleyan Methodists, and the clergy of the Church of Rome in Upper Canada received allowances from Government that were derived from the casual and territorial revenue of that Province, as appears in an address to the Queen's Most Excellent Majesty, of the twenty-sixth of February, eighteen hundred and thirty-eight, by the Commons' House of Assembly of Upper Canada. In Lower Canada the proceeds of the Clergy Reserves were all absorbed in the expense of management up to the year eighteen hundred and thirty-seven, as appears in a letter from Sir George Grey, Secretary of State for the Colonies, to Dr. Black, of the twenty-fifth of March, eighteen hundred and thirty-seven, and found in Papers relating to the Churches of England and Scotland, ordered to be printed by the House of Commons, and which I now exhibit. In a letter from the Hon. Wm. Morris to Sir George Grey, it appears that in eighteen hundred and thirty-seven not one penny had yet been paid to the Presbyterians in Canada from the Clergy Reserves. The Provincial Legislature of Upper Canada by a majority of one on the fourteenth of May, eighteen hundred and thirty-nine, resolved to remit the question of the management of the Clergy Reserves, which had been in the hands of the Local Legislature from eighteen hundred and thirty-one onwards to eighteen hundred and thirty-nine, as appears from a dispatch of Sir George Arthur to the Marquis of Normanby, in which he says: "Whatever might have been the legal interpretation in the present Act of the term 'Protestant Clergy,' it is my duty to state that no such limitation will now satisfy the people of this country." This bill, passed in eighteen hundred and thirty-nine by the Legislature of Upper Canada, was refused the Royal assent on technical grounds, as appears from the dispatch of Lord John Russell to the Right Hon. C. Poulette Thompson, seventh of September, eighteen hundred and thirty-nine, in which he says:—"It was not until the fifteenth of August that I received from the Lieutenant-Governor the document necessary to enable me to fulfil the requisition of the constitutional Act of seventeen hundred and ninety-one. It was, therefore, impossible that the Bill should be finally enacted by the Queen in Council until after the commencement of the Parliamentary session of eighteen hundred and forty." The Bill was again introduced into the Legislature the following session and again passed, and in this Bill the following clause occurs:—"And be it further enacted by the aforesaid authority that as soon as the said fund shall exceed the amount of the several stipends and allowances aforesaid, one-half of the said annual fund shall be allotted to the Churches of England and Scotland in this Province, the said Church of Scotland to be held to include the Presbyterians of the United Synod of Upper Canada, and shall be divided between the said Churches of England and Scotland in proportion to the number of their respective members." This Bill was refused the Royal assent on the ground that the Judges of England, when asked their opinion by Lord John Russell, Secretary of State for the Colonies, alleged that it was beyond the power of the Local Legislature to dispose of the Clergy Reserves. Yet the principles of this Bill were afterwards incorporated in the Imperial Bill 3rd and 4th Vic., chap. 78. The parties entitled to share in the Bill thus passed by the Legislature of Upper Canada were all Protestants, including the United Synod of

Moravians and Tunkers. The Right Hon. C. Poulette Thompson, in forwarding Upper Canada, Lutherans, Calvinists, Methodists, Congregationalists, Anabaptists, the Bill to Lord John Russell, in a despatch of the thirteenth February, eighteen hundred and forty, says: "The distribution may be provided for either by the Imperial Parliament or by the United Legislature, and in either case I would recommend that the division should be made according to numbers amongst the different religious denominations of Protestants." In a despatch to Lord John Russell of the eleventh of February, eighteen hundred and forty, the Right Hon. C. Poulette Thompson, Governor-General, urges that whatever legislation should take place in the Imperial Parliament, should be in accordance with the wishes of the Legislature of Canada, as appears in the correspondence relating to the Affairs of Canada, a return to the House of Commons ordered to be printed, and which I now exhibit, and in which he says: "But above all it is necessary for the continuance of the state of feeling I have described in this Province, or to afford a prospect of improvement in the future, that the settlement of the Clergy Reserves, which has been agreed to here, should receive the confirmation of Her Majesty, and that the question should never more be returned for discussion in Upper Canada." In the same despatch further on he says: "If the establishment of the Union and the settlement of the Clergy Reserves be effected in accordance with the wishes of the Legislature here, and if Parliament shall consent to afford some aid in developing the resources and re-establishing the credit of the Colony when the Union shall be determined upon which may be done without any pecuniary sacrifice on the part of the Mother Country, I am sanguine as to the future condition of the Canadas."

Lord John Russell consulted the Judges of England on the principles contained in the bill passed by the Legislature of Canada aforesaid, as to the meaning to be attached to the term "Protestant Clergy," and got for answer in eighteen hundred and forty the following: "We are of opinion that the words 'Protestant Clergy' in 31 George III., chap. 31, are large enough to include and do include other clergy out of the Church of England and Protestant bishops, priests and deacons that have received episcopal ordination. When your Lordships ask if any other clergy are included, what other clergy? we answer that the Church of Scotland is one instance of such other Protestant Clergy. And further, in answering your Lordships, if we specified no other clergy than the clergy of the Church of Scotland, we did not intend thereby that the clergy of no other Church than the Church of Scotland may not be included under said term 'Protestant Clergy.'" I am only quoting from memory. But the opinion I have last above referred to is referred to in the minutes of eighteen hundred and forty, Respondents' Exhibit 3,3, in a letter to the General Assembly's Committee on Colonial Churches: "The recent decision of the Judges of England affirming that interpretation of the law which we have always advocated, has clearly established the right and status of every branch of the Church of Scotland planted in a British Colony." In a letter to the General Assembly of the Presbyterian Church in the United States there is another reference to the same decision, page 42, Respondents' Exhibit 3,3: "By the unanimous decision of the Judges of England the right of our Church to important

RECORD.

*In the
Superior
Court.*

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued.

RECORD. "privileges and advantages in this and other Colonial dependencies of the British
"Crown has been determined."

*In the
Superior
Court.*

No. 54.
Deposition
of Rev.
Robert
Campbell.
produced by
Respondents
filed 15th
July 1879.
—continued.

The Act 3 and 4 Victoria, chap. 78 was, at the instance of the Legislature of Canada, in an address passed the 15th of July, eighteen hundred and fifty, praying Her Majesty to do away with the provision for the maintenance of religion from the Clergy Reserves, amended by 16 Victoria, chap. 21, passed in eighteen hundred and fifty-three, giving power to the Canadian Legislature to deal with the Clergy Reserves, reserving to clergymen at that time having rights in the fund, their vested rights. Accordingly, the Canadian Act, 18 Victoria, chap. 2, was passed, secularizing the Clergy Reserves, but conserving vested rights, that 10 is to say, securing to clergymen who were receiving from the Clergy Reserves at the time of the passage of the Imperial Act in eighteen hundred and fifty-three the amounts to which they were at that time entitled, for the whole of their natural lives, described as "parties to whom the faith of the Crown is pledged"

(Petitioner objects to the verbal interpretation of said Act by the witness, inasmuch as the Act speaks for itself and is only subject to interpretation by the Court. Objection reserved by the parties).

A. In this Act it was provided that the Government might commute the claims of ministers whose rights were thus reserved, but such commutation was to take place only through the Churches to which they respectively belonged. The 20 ministers in connection with the Presbyterian Church of Canada in connection with the Church of Scotland did thus commute, as appears from the returns to an address from the Legislative Assembly to His Excellency the Governor-General, which I now hold in my hand and exhibit, being Appendix No. 35 to the Journals of Canada for the year eighteen hundred and fifty-six.

Q. Did any other denominations or bodies of Christians besides the said Presbyterian Church of Canada in connection with the Church of Scotland and the Church of Scotland receive a share of the proceeds of the said Clergy Reserves Fund or commute their claims on the same?

A. They did, as appears from the returns in the same book I have just re- 30ferred to and which I now hold in my hand. Ministers of the late United Synod of the Presbyterian Church of Upper Canada received two thousand two hundred and forty pounds and eleven pence. Wesleyan ministers also received nine thousand seven hundred and sixty-eight pounds and eleven pence.

Q. All the references and quotations you have given in the previous part of your evidence, with the exception of the one you quoted from memory, have been given from the said returns which you have here with you in Court, and from the minutes of Synod?

A. Yes.

Q. Previous to the organisation of the Synod of the Presbyterian Church of 40Canada in connection with the Church of Scotland in eighteen hundred and thirty-one, what was the state of the Presbyterian Church in Canada? Was it with organisation, and who composed its ministers?

A. For the most part the ministers were not connected with any organization until eighteen hundred and thirty-one. There had been a Presbytery of Montreal in existence, for two or three years, about the beginning of the century. This Presbytery, however, seems to have become defunct, and the

ministers connected with the Church of Scotland, until the year eighteen hundred and thirty-one, were really each independent of the other. They had come from Scotland and were ministers over congregations, but there was no ecclesiastical organization. The ministers that did not belong to the Church of Scotland formed themselves into a Presbytery called the United Presbytery of Upper Canada in eighteen hundred and eighteen.

Q. Will you please state when and at whose instance the said Presbyterian Church of Canada in connection with the Church of Scotland and its Synod was originated?

- 10 A. It would appear to have originated with the dispatch of Sir George Arthur, of first August, eighteen hundred and thirty, then Secretary of State for the Colonies, to Lieutenant-Governor Sir John Colborne, of Upper Canada. I quote: "It appears to me very desirable, if such a measure could be accomplished, that the whole Presbyterian Clergy of the Province should form a Presbytery or Synod, and that each Presbyterian minister who is to receive an allowance from Government should be recommended by that body. By this arrangement the whole of the Presbyterian Clergy of Upper Canada would be placed upon the same footing with respect to assistance afforded by Government towards their support." This is quoted from the correspondence relative to the Clergy Reserves, Canada, which I have referred to before and have in my hand. I quote also from the minutes of Synod of eighteen hundred and thirty-one, page 16, Respondents' Exhibit 3,3. It is a memorial of the Synod to the General Assembly of the Church of Scotland: "Your memorialists contemplate that all such relations and interests will be most effectually as well as constitutionally watched over by the Synod, and that through it an organ of communication between the different ministers and the Government will be supplied, the wants of which the heads of the Government have already felt, as may be inferred from the recent dispatch from the Right Hon. Sir George Murray, late Secretary to His Majesty for the Colonies, to His Excellency Sir John Colborne, Lieutenant-Governor of Upper Canada, a copy of which dispatch was communicated by His Excellency to one of your memorialists, and is herewith enclosed. Those and other obvious instructions appear to your memorialists to justify their forming themselves into a Synod."

Q. Is this letter or dispatch of Sir George Murray to be found in the minutes of Synod also?

A. It does appear in the Synod minutes for eighteen hundred and thirty-one, pages 13 and 14, Exhibit 3,3.

Q. When and how was the said Presbyterian Church of Canada in connection with the Church of Scotland formed, and by whom?

- 40 A. It was formed by ministers and commissioners from the congregations in connection with the Church of Scotland in Canada, met pursuant to agreement at Kingston on the seventh day of June, eighteen hundred and thirty-one, as appears in Respondents' Exhibit 3,3, page 4. This Convention had their attention directed to Sir George Murray's dispatch relative to a union between the different classes of Presbyterians, and "then proceeded to consider the question of the formation of Presbyteries and a Synod in Canada, when, after mature deliberation, it was moved, seconded and carried unanimously that this Con-

RECORD.

In the
Superior
Court.

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued.

RECORD. "vention of ministers and elders in connection with the Church of Scotland,
 "representing their respective congregations, do now form themselves into a Synod
 "to be called the Synod of the Presbyterian Church of Canada in connection with
 "the Church of Scotland?"

*In the
 Superior
 Court.*

No. 54.
 Deposition
 of Rev.
 Robert
 Campbell,
 produced by
 Respondents
 filed 15th
 July 1879.
 —continued.

Q. Was the said Presbyterian Church of Canada in connection with the Church of Scotland an incorporated body?

A. It was not. It was a voluntary association composed of ministers and congregations choosing thus to unite.

Q. Was the said Synod formed and the said name given to it by the said convention of ministers without reference to the Church of Scotland in Scotland? 10

A. It was.

Q. Will you kindly state and point out from the minutes of said Synod or other documents, the signification and meaning of the words occurring in the name of said Church, namely, "in connection with the Church of Scotland," and show the nature of such connection. Answer fully?

A. At the convention at which the Synod was formed, after resolving to form said Synod, the commissioners present stated that they "left it to the Venerable the General Assembly to determine the particular nature of that connection which shall subsist between this Synod and the General Assembly of the Church of Scotland." In eighteen hundred and thirty-three there was produced 20 and read in the Synod, as appears in the minutes of eighteen hundred and thirty-three, page 42, Respondents' Exhibit 3,³ an extract from the records of the General Assembly of the Church of Scotland, dated Edinburgh, eighteenth May, eighteen hundred and thirty-three, containing the deliverance of the General Assembly as to the Churches in the Colonies, in response to the request of the Synod to the General Assembly to define the relations that should subsist betwixt the Synod and said Assembly. The Declaratory Enactment was ordered to be inscribed in the minutes and is as follows.—

"That it is expedient and proper for ordained ministers of the Church of Scotland connected with fixed congregations in any of the British Colonies to 30
 "form themselves, where circumstances permit, into Presbyteries and Synods,
 "adhering to the standards of this Church and maintaining her form of worship
 "and government.

"That no minister should be received as a member of any such Presbytery
 "or Synod when first formed who has not been ordained by a Presbytery of this
 "Church; that no minister of this Church should be afterwards received as a
 "member who does not come specially recommended from the Presbytery by whom
 "he was ordained or where he has last resided; and that no probationer of this
 "Church should receive ordination from any such Presbytery except on his pro-
 "ducing an extract of license with a testimonial of his good character from the 40
 "Presbytery or Presbyteries within whose bounds he has resided down to the
 "time of his leaving Scotland.

"That it is not expedient for such Presbyteries, in the present state of education in the colonies, to exercise the power of licensing probationers; but that
 "licentiates of the Church of Scotland who shall be ordained by any such Pres-
 "bytery to a particular Church in the manner above described shall remain in
 "full communion with the Church of Scotland and retain all the rights and

"privileges which belong to licentiates or ministers of this Church, and that members of congregations under the charge of ministers so ordained, shall, on coming to Scotland, be admitted to Church privileges on the production of satisfactory certificates of their religious and moral character from the minister and session of the congregation to which they have belonged.

"That it is earnestly recommended to all ministers and probationers of this Church who remove to those Colonies in which such Presbyteries are constituted, to put themselves under the inspection of the Presbytery of the bounds within which they may reside, and in the event of their returning to this country to produce testimonials from such Presbytery or Presbyteries of their character and conduct during their absence.

"That a Standing Committee shall be named by the General Assembly to correspond with such Churches in the Colonies for the purpose of giving advice on any question with regard to which they may choose to consult the Church of Scotland, and affording them such aid as it may be in the power of the Committee to give in all matters affecting their rights and interests.

"The Synod receive the same as part of the constitution of this Church, and Presbyteries are enjoined to regulate their proceedings accordingly."

In eighteen hundred and thirty-three, as appears in the minutes of that year, page 54, Respondents' Exhibit 3,3, the following occurs: "The Synod expresses its strong desire that the General Assembly should caution the Presbyteries at home (in Scotland) not to ordain ministers to Canada upon a call and bond unless these have been certified by Presbyteries in this country;" and in the letter of the Synod to the General Assembly's Committee on Colonial Churches, eighteen hundred and forty, page 36, Respondents' Exhibit 3,3, the Synod declares that "it was actuated by an inextinguishable veneration for the rules and example of the Church of Scotland." "We have had recourse to her past history and have endeavored, according to the best of our judgment to apply them (that is the rules and examples) to the peculiar circumstances in which we are placed."

In eighteen hundred and forty-four the Synod passed an Act in which it gathered up the results of its experiment, its history previously being tentative, in the adapting of the regulations and principles of the Church of Scotland to the wants and circumstances of Canada, which act declared the spiritual independence of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, and may be found on page 15 of the minutes of eighteen hundred and forty-four, Respondents' Exhibit 3,3, and is as follows:

"Whereas, this Synod has always, from its first establishment, possessed a perfectly free and supreme jurisdiction over all the congregations and ministers in connection therewith; and although the independence and freedom of this Synod in regard to all things spiritual cannot be called in question, but has been repeatedly, and in most explicit terms affirmed, not only by itself, but by the General Assembly of the Church of Scotland, yet, as in present circumstances it is expedient that this independence be asserted and declared by a special Act,"

"It is, therefore, hereby declared that this Synod has always claimed and possessed, does now possess, and ought always in all time coming to have and

RECORD.

*In the
Superior
Court.*

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued.

RECORD. " exercise a perfectly free, full, final, supreme and uncontrolled power of jurisdiction, discipline and government in regard to all matters ecclesiastical and spiritual over all the ministers, elders, Church members and congregations under its care, without the right of review, appeal, complaint or reference by or to any other Court or Courts whatsoever, in any form or under any pretense; and that in all cases that may come before it for judgment

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
---continued.

(Petitioner objects to the citing of this Act, inasmuch as the contents of the volume of minutes of Synod containing said Act have already been admitted as evidence in this cause and are all completely proved, and the only effect of the citation of the Act by the witness, is to unnecessarily increase the expense of the case. Objection reserved by the parties.)

" the decisions and deliverances of this Synod shall be final. And this Synod further declares that if any encroachment on this supreme power and authority shall be attempted or threatened by any person or persons, court or courts whatsoever, then the Synod and each and every member thereof shall to the utmost of their power resist and oppose the same; and whereas the words in the designation of the Synod in connection with the Church of Scotland, have been misunderstood or misrepresented by many persons, it is hereby declared that the said words imply no right of jurisdiction or control in any form whatever by the Church of Scotland over this Synod, but denote merely the connection of origin, identity of standards, and ministerial and Church communion. And it is further enacted and declared that this supreme and free jurisdiction is a fundamental and essential part of the constitution of this Synod; and that this may be fully known to all those who may hereafter seek admission into our Church, it is enjoined that all the Presbyteries shall preserve a copy of this Act and cause it to be read over to and assented to by every minister and probationer who may apply for ordination or induction into any pastoral charge."

Q. Previous to the passing of the said Act had the said Church of Scotland in Scotland any right of jurisdiction or control in any form whatever, either in matters spiritual or otherwise, over the said Presbyterian Church of Canada in connection with the Church of Scotland?

A. It had not and never claimed it.

Q. What has the attitude of the Church of Scotland in Scotland been in that respect from the beginning of the said Presbyterian Church in Canada in connection with the Church of Scotland up to the time of the union of Churches in question in this cause, namely, as to claiming authority over the said Church?

A. The attitude of the Church of Scotland has always been to allow the Church in Canada to manage its own affairs, and never assumed to dictate to the Synod how it should manage its affairs, either ecclesiastically or financially.

Q. Then do I understand you to say that the Presbyterian Church of Canada in connection with the Church of Scotland was always from its beginning an entirely independent and voluntary body and quite independent of the Church of Scotland?

(Objected to, inasmuch as the witness cannot have a personal knowledge of the subject matter necessary to enable him to answer the question intelligently,

and inasmuch as the subject matter of the question is a matter to be proved by record, not depending on the vicarious opinion of any witness. Objection reserved by the parties.)

A. That is what I have said.

Q. Do you know the Petitioner in this cause, the Rev. Robert Dobie ?

A. I do.

Q. Are you aware whether or not he assented or gave his adherence to the said Act of said Synod of eighteen hundred and forty-four, which you have just quoted at length in your evidence ?

10 A. I have seen the minutes of the Presbytery of Glengarry, in which it is stated that he did so give his adhesion.

Q. Is it not true that according to the rules and procedure of the said Presbyterian Church of Canada in connection with the Church of Scotland, of which he was a member, it was obligatory upon every minister at the time of his ordination and induction to give his assent to such Act of Independence passed in the year eighteen hundred and forty-four ?

A. It is so declared in said Act itself, and has been the practice uniformly since.

20 Q. In speaking of the General Assembly in the previous part of your deposition, what General Assembly did you intend to refer to ?

A. The General Assembly of the Church of Scotland in Scotland.

Q. That is its supreme court, I believe ?

A. Yes, its supreme court.

Q. Do you know how and when the negotiations with reference to the union in question in this cause were initiated ?

(Objected to, as irrelevant to the issue, and in so far as susceptible of proof being matter of record which should be proved, *alimunde*. Objection reserved by the parties.)

30 A. In eighteen hundred and sixty an overture was introduced to the Synod by Professor George, suggesting the propriety of opening negotiations for union with the Presbyterian Church of Canada as appears from the minutes of eighteen hundred and sixty, page 43 of Respondents' Exhibit 3,3. A committee was appointed, which reported to the Synod of eighteen hundred and sixty-one, as appears from the minutes of that year, page 25, Respondents' Exhibit 3,3. A discussion took place, and it was resolved to postpone further action on the question. Then in eighteen hundred and sixty-six, when the question again came before the Synod by overture from the Presbytery of Ottawa, it was again determined not to proceed further with negotiations. In eighteen hundred and seventy the congregation of Lindsay, of which the Petitioner had been minister until within a few weeks previous, sent an overture setting forth the desirableness of a union 40 with the Canada Presbyterian Church, and craving the Synod to take steps in the premises, as appears on page 37 of the minutes of eighteen hundred and seventy, Respondents' Exhibit 3,3. At the same meeting of Synod a letter was received by the ex-moderator, Dr. Jenkins, from Dr. Ormiston on the subject of union, which letter was read to the Synod. Said letter may be found on pages 31 and 32 of minutes of eighteen hundred and seventy, Respondents' Exhibit 3,3. At this meeting it was resolved to appoint a committee on union. This

RECORD.

In the
Superior
Court.

No. 54.

Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued

RECORD. committee met with committees of the other three Churches negotiating for union, namely, the Canada Presbyterian Church, the Presbyterian Church of the Lower Provinces of British North America, and the Presbyterian Church of the Maritime Provinces, in September, eighteen hundred and seventy, and drafted the first proposed basis of union.

*In the
Superior
Court.*

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued.

Q. Now when these negotiations for the said union were initiated was any reference made to the Church of Scotland, in Scotland?

A. None whatever.

Q. How long did the discussion on the said union question take place in the Synod before any formal objection was made by the said Rev. Robert Dobie, 10 or any other, except as to mere details?

A. Except as to details no objection was taken until eighteen hundred and seventy-four, four years after the negotiations were entered upon.

Q. Did the Petitioner, Rev. Robert Dobie, take part in these discussions?

A. He did.

Q. When was his first formal dissent?

A. His first formal dissent I find recorded in the minutes of Synod of eighteen hundred and seventy-four, page 14.

Q. I notice that this is called a protest; is there any difference between a protest and dissent according to Presbyterian procedure? 20

A. The word protest is itself incomplete; it is only part of an ecclesiastical phrase. Protest, when expressed fully should run, protest for leave to appeal, and which is never taken except from an inferior court to a superior. Anything in the shape of a protest allowed in the superior court, though it may be called a protest, is in fact only a dissent.

Q. You can show authority for that?

A. I can show authority for that. I quote from "Styles and Procedure in the Church Courts in Scotland" by the Church Law Society of Edinburgh. First, as to dissent: "Any member of the Court may dissent from proceedings which he conceives may be contrary to the Word of God, the Acts of Assembly, or the received order of this Kirk, and may cause his dissent to be marked in the Record. By so doing he saves himself from any censure or danger that may arise from those proceedings." And then further on under the same head: "A dissent can be given in only by those who were present when the judgment dissented from was pronounced, and no protest can be taken against a decision of the Assembly." As a matter of record I was going to point out several instances in which dissents have been recorded to show that although the word "protest" was allowed on this occasion and on another occasion in the minutes of Synod for eighteen hundred and thirty-five, page 80, Respondents' Exhibit, 3,3, I quote: "Mr. Alexander Mathieson craved leave to enter his protest 40 against the names of certain ministers in the roll of the Presbytery of Toronto, namely, Mr. Peter Ferguson, Mr. Andrew Bell, Mr. James George, and Mr. Duncan McMillan, on the ground of their not being ministers of the Church of Scotland," yet the effect of this was not to stay proceedings, for these names were entered, and they were subsequently recognized even by the Rev. Alexander Mathieson as members of Synod, showing that the protest on that occasion implied only dissent. Other dissents will be found recorded in the minutes of eighteen hundred and thirty-two, page 22.

(Objected to, as generally irrelevant. Objection reserved by the parties.)

A. "Mr. John McKenzie entered his dissent in his own name and in the name of such as may adhere to him for reasons to be given in," &c.

Q. What is the effect of a dissent or a protest according to Presbyterian procedure and polity?

(Objected to, inasmuch as it is not competent for the witness to state the legal effect of the protest, it being matter for the Judge to decide. Objection reserved by the parties.)

A. The effect of a dissent I have explained in the extract from the Procedure of the Church of Scotland. The effect of a dissent is to relieve the person dissenting, relieve his conscience, and relieve him from any other responsibility in which he might be personally involved. A protest, as I have already stated, can be taken only from an inferior to a superior court, and the effect of it is to stay all proceedings in the inferior until it is disposed of in the superior court.

Q. Although as you have already explained the said union question was introduced into the said Synod by overture, was it necessary according to Presbyterian procedure and polity that the said question or any other business coming up in Synod should be introduced by overture?

A. It was not necessary. In eighteen hundred and thirty-eight, as appears from the minutes of Synod of that year, page 15, the Synod passed the following enactment, which has ever since been known as the Barrier Act: "That the legislative enactments of this Synod be regularly transmitted to the several Presbyteries and be in force only for one year, if a dissent of a majority of the Presbyteries be intimated to the meeting of Synod next after that at which such enactment shall have been respectively made. The Synod further resolve that if the dissent of a majority of the Presbyteries is not intimated at next session, this overture shall be held as approved, and the principle thereof applied to enactments of this and succeeding sessions." The Barrier Act of the Church of Scotland made it imperative that all business should be introduced to the Assembly by overture; our Barrier Act does not make such a stipulation. On many occasions subsequently to the passing of this enactment the Synod of its own motion took up and initiated business and disposed of it. In eighteen hundred and fifty-two, as appears from the minutes of that year, page 20, Respondents' Exhibit 3,3: "The Synod appointed Mr. McGill and the Hon. Judge McLean to draw up a minute expressive of the views of this Synod in regard to the importance and desirableness of greater union among the several branches of the Presbyterian Church in Canada." In eighteen hundred and forty-four, pages 14 and 15, the Synod appointed a Committee to draw up an act declaring the independent spiritual jurisdiction, to be read over to and assented to by ministers and probationers on their admission to the body. In eighteen hundred and fifty-five, as appears from the minutes page 22, the Synod of its own motion, without being overtured thereto, appointed the Temporalities Board, and decided the disposal of the revenue derived from the Temporalities Fund.

Q. I think you omitted to show by the returns in eighteen hundred and forty of the Government, all those who were entitled as claimants upon the proceeds of the Clergy Reserves Fund; can you give them now?

RECORD.

In the
Superior
Court.

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 54.

Deposition

of Rev.

Robert

Campbell,

produced by

Respondents

filed 15th

July 1879.

—continued.

A. I find a return of annual payments to religious bodies in Upper Canada to which the faith of Her Majesty's Government is pledged, contained in Correspondence respecting the Clergy Reserves, Canada, ordered to be printed by the House of Commons in England, and which I have already produced and now hold in my hand. The return is as follows: Clergy of the Church of England, eight thousand five hundred and sixty-eight pounds; Presbyterian Clergy of Canada in connection with the Church of Scotland, one thousand seven hundred and fifty-seven pounds fifteen shillings and sixpence; Presbyterian ministers of the United Synod of Upper Canada not in connection with the Church of Scotland, seven hundred and seventy-seven pounds fifteen shillings and sixpence; British Wesleyan Methodist, seven hundred and seventy-seven pounds fifteen shillings and sixpence.

Q. At the date of the said commutation, to wit, in eighteen hundred and fifty-five, how many ministers of those who commuted their claims were ordained ministers of the Church of Scotland in Scotland?

Q. Of the seventy-three ministers who commuted only forty were even licentiates of the Church of Scotland. I cannot say how many were ordained ministers. The Petitioner was not an ordained minister of the Church of Scotland, he was only a licentiate, but of the seventy-three commuting ministers only forty were licentiates or probationers of the Church of Scotland, the other thirty-three had belonged to various dissenting bodies and were not ministers of the Church of Scotland, some of them being licensed and ordained in Canada, and others coming in from dissenting bodies. Of these several united with the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland in eighteen hundred and thirty-four, as appears from the minutes of eighteen hundred and thirty-four, and others in eighteen hundred and forty, as appears from the Synod minutes of eighteen hundred and forty, pages 12 and 13, who, however, prior to their incorporation into the Synod, were in receipt of moneys from Government in Upper Canada, the said ministers receiving from the same fund as the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland. These were the ministers who belonged to the United Synod of Upper Canada, and who were afterwards received into the Presbyterian Church of Canada in connection with the Church of Scotland.

Q. Can you state in what manner the commutation of the claims of ministers connected with the Presbyterian Church of Canada in connection with the Church of Scotland was effected with the Government in eighteen hundred and fifty-five, that is to say, through what body was the same commutation effected, and on what conditions, and were any resolutions passed referring to said commutation, and please point them out?

A. A meeting of said Synod *pro re nata* was held in Montreal on the eleventh of January, eighteen hundred and fifty-five, when the question of taking advantage of the commutation clause of the Act of Secularization which I have referred to already, was discussed and certain resolutions arrived at which are set forth on pages 6 and 7 of the minutes of Synod, eighteen hundred and fifty-five. The Government made it imperative that the commutation should be effected through the Synod, as appears from correspondence held with certain ministers to be found in Appendix No. 35 to the Journals of the Legislature of the Province

of Canada for the year eighteen hundred and fifty-six, which I now hold in my RECORD.
hand and refer to. I quote a letter :

"Galt, 1st January, 1855.

*In the
Superior
Court.*

"Honorable Sir,

"Being an incumbent of the Church of Scotland at Galt, in Canada West,
"and consequently affected in my rights by the Bill secularizing the Clergy Re-
"serves in Canada, and fully disposed to avail myself of the commutation clause,
"I therefore beg leave to inquire whether the Government are willing to com-
"mute with me as an individual, or must applications be first sanctioned by our
10 "Church. I write this with the concurrence of several of my brethren in this
"section of our country who are equally interested and desirous of information
"on the subject.

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued

"May I presume to ask the favor of an immediate answer.

"I remain, etc.,

"(Signed) H. GIBSON, Minister.

"Hon. P. J. O. CHAUVEAU."

The reply was as follows :

"Secretary's office, Quebec,

"24 January, 1855.

20 "Reverend Sir,

"I am commanded by the Governor-General to inform you in reply to your
"letter of the 1st instant, that His Excellency is advised that the Government
"cannot entertain applications for commutation from individual ministers unless
"the consent of the Church to which they belonged shall have been first ob-
"tained.

"I have, etc.,

"P. J. O. CHAUVEAU, Secretary.

"Rev. H. GIBSON, Galt."

30

There is another instance, that of the Rev. Wm. Johnson, which is to be
found on the same page.

Q. Then the commutation in question was effected under the terms and
conditions of the said resolutions ?

A. It was.

Q. At whose instance was it that the Act incorporating the Board, Re-
spondents, was obtained ?

40 A. At the instance of the Synod. The first resolution is to be found on
page 7 of the minutes of eighteen hundred and fifty-five, Respondents' Exhibit
3,3, appointing the Commissioners who were appointed by the Synod to obtain
commutation, the same committee to take the necessary steps to get an Act of
incorporation for the management of the general Fund "the aforesaid Commis-
sioners to constitute said corporation until the next meeting of Synod, when four
"more members shall be added by the Synod." In eighteen hundred and fifty-
six, the Synod, as appears from the minutes of that year, page 22, appointed the
Commissioners aforesaid to manage the Fund, and declared that the Board should
be designated "The Board for the Management of the Temporalities' Fund of

RECORD. "the Presbyterian Church of Canada in connection with the Church of Scotland." The draft of an Act of incorporation for the Board was presented to the Synod in the year eighteen hundred and fifty-seven, and may be found on page 17 of the minutes of that year. It was presented to the Synod and discussed and adopted. On page 23, minutes of eighteen hundred and fifty-seven, I find it was moved, "that all by-laws which the Board may enact shall be submitted to the next meeting of Synod or other supreme court, after their enactment, for confirmation, amendment or rejection, but in the meantime they shall until then be operative as interim by-laws."

*In the
Superior
Court.*

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued.

Q. What control has the said Synod exercised over the said Fund since the 10 Act of incorporation was obtained?

A. First of all it appointed certain members of the Board every year, filled all vacancies every year, required from the Board a report of their administration during the preceding year, and required all amendments to be submitted.

Q. Has it not made some change in the payments that were to be made to certain men who had claims on the said Fund?

A. Yes. The Synod in eighteen hundred and fifty-six, as will be seen on page 22 of the minutes of that year, changed one of the principles declared in eighteen hundred and fifty-five, when commutation was resolved upon by the Synod, to be fundamental principles, namely, that after the claims of those ministers who had been allowed to commute by the Government were satisfied, eleven men who, though they were on the Synod roll at the time of the passing of the Secularization Act, were not allowed by the Government to commute, because they were put on the roll since May, eighteen hundred and fifty-three, and, therefore, the faith of the Government was not pledged to them—should receive one hundred and twelve pounds ten shillings as soon as the state of the Fund should admit of it, resolving that thereafter, they should receive only one hundred pounds a year. Further, it resolved, that if the sum at the disposal of the Board should at any time be insufficient to give one hundred pounds a year to all other claimants besides the commuting ministers and the eleven privileged ministers just mentioned, "the whole sum be divided among the claimants, but the division shall not be continued after the allowance to each minister has fallen to fifty pounds."

Q. During all that time the Rev. Robert Dobie, Petitioner, was a member of said Synod?

A. Yes; during the time that these changes were being effected.

Q. He never objected?

A. I find no record in the minutes of any objection by the Petitioner.

Q. How was said Presbyterian Church of Canada in connection with the Church of Canada, governed, and explain the nature and powers of the governing bodies?

A. It was governed by Sessions, which are composed of the ministers of charges, together with the elders, whose jurisdiction extend only over congregations; by Presbyteries which are composed of all the ministers in charges within a certain district, and one elder representing each charge, and their jurisdiction is over all the congregations within their bounds; by Synods, composed of all the Presbyteries within their bounds, and they have control over the affairs of

all the Presbyteries within their bounds; and then by General Assemblies, composed of delegates chosen by Presbyteries, an equal number of clerical and lay representatives. The power of the General Assembly is supreme over all the inferior courts. The Synod of the Presbyterian Church of Canada in connection with the Church of Scotland up to the fifteenth of June, eighteen hundred and seventy-five, was the supreme court of that Church, and had all the powers of a General Assembly over the inferior courts. I have described the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, as having the same authority and power as General Assemblies in Churches that are fully organized, that is to say, supreme control over all the affairs of the Church.

Q. How does the said Synod act as a governing body? In what way does it arrive at a conclusion?

A. By resolutions arrived at by a vote of the majority.

Q. And is the vote of the majority binding on the Synod and on the Church?

(Objected to, as illegal. Objection reserved by the parties.)

A. Always.

Q. Did the said Synod exercise control over any other funds, money, or property of the said Church besides the said Temporalities' Fund which you have already referred to?

A. It exercised control over all the properties of the Church. It had a standing committee called the Committee on Church Property, whose function was to advise with congregations. It gave orders to all connected with it. An overture was submitted in eighteen hundred and forty, as appears from page 18 of the Minutes of that year, and afterwards adopted, which overture gave orders for the proper deeding of properties in connection with the Church. This committee afterwards prepared a form of deed which all congregations formed from that time forward, were instructed to adopt. Afterwards, the Synod, in eighteen hundred and forty-seven, passed an interim act appointing a model constitution for all congregations admitted from that time into the Church, which is contained on pages 21, 22 and 23 of the minutes of eighteen hundred and forty-seven, Respondents' Exhibit 3,3. In eighteen hundred and fifty-nine, as appears from the minutes of that year, page 24, said Exhibit 3,3 the Synod requested the Committee on Church Property to prepare a statement of said property throughout the Province, enjoining Presbyteries to take order that the information required by the Committee be furnished to them. In eighteen hundred and fifty-five, as appears from page 22 of the minutes of that year, in said Exhibit 3,3 the Synod took cognizance of the case of the London Church property and passed resolutions thereon. Besides, there was a Finance Committee of Synod which assessed congregations from year to year and could cut off those that did not pay. The Synod exacted accounts of their finances from congregations at all times. The Synod required reports to be given in of all moneys raised, and generally managed the mission funds of the Church.

Q. I think you stated the Synod was the supreme and ultimate court of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. Yes.

RECORD.

*In the
Superior
Court.*

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 54.

Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.

—continued.

Q. Will you please state what a quorum of Synod consists of?

A. According to the rules of Synod adopted in eighteen hundred and sixty-eight, it was stipulated that a quorum of Synod must be fifteen.

Q. Were you present at the Synod of the said Church on the fourteenth and fifteenth days of June, eighteen hundred and seventy-five?

A. I was.

Q. Is it true, as stated in the petition of the said Rev. Robert Dobie, that only several members of the said Synod adjourned to the Victoria Skating Rink on the fifteenth of June, eighteen hundred and seventy-five, and if not, will you please state what really took place?

A. The Synod adjourned from St. Paul's Church to meet in the Victoria Skating Rink by virtue of the power inherent in it, and in pursuance of a resolution passed on the fourteenth of June, eighteen hundred and seventy-five.

Q. Where is that resolution to be found?

A. On page 35 of the minutes of Synod of eighteen hundred and seventy-five, Respondents Exhibit 3,3.

Q. How long was the said Synod assembled in the said Victoria Skating Rink on the fifteenth of June, eighteen hundred and seventy-five, before the said union was consummated?

A. I should say at least an hour. I think it was much more than an hour, but I am safe to say an hour.

Q. Will you state the nature of the business which was transacted there in the said Synod previous to the said union?

A. The Synod of the Presbyterian Church of Canada in connection with the Church of Scotland arrived first in the Victoria Hall, or Skating Rink, at ten minutes to eleven o'clock, and constituted by prayer after the adjournment. Afterwards the other Churches negotiating with a view to union entered the Hall or Skating Rink, and when all were present devotional exercises were engaged in, which consisted of praise, reading of the Scriptures and prayer, taken part in by the moderator of the Presbyterian Church of Canada in connection with the Church of Scotland, in conjunction with the moderators of the three several negotiating Churches. The rolls were called of the several Churches, all which business occupied to my mind more than an hour prior to the signing of the Articles of Union.

Q. Was not the minute adopted at Monday's diet of the said Synod agreeing to the consummation of union and instructing the moderator to sign the Articles of Union, read by the clerk of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. It was read. That was one of the items of business transacted.

Q. Do the minutes printed on page A. of Petitioner's Exhibit "BBB," convey a correct idea of the business which was done at the said adjourned meeting of the said Synod in the Victoria Hall on the fifteenth of June, eighteen hundred and seventy-five?

A. They do.

The examination of the witness is adjourned.

And on this seventeenth day of July of the year aforesaid, re-appeared the said witness Rev. Robert Campbell, and continued his evidence as follows: **RECORD.**

Q. Was the form of worship and government of the Presbyterian Church of Canada in connection with the Church of Scotland the same as that of the Church of Scotland in Scotland?

A. It was.

Q. What were the objects before the said union of the said four Presbyterian bodies which united to form the said union?

A. Their objects were identical, that is to say, their professed aim as Churches was to supply the ordinances to persons professing the creed of the Confession of Faith, supplying the ordinances to Presbyterians from Scotland, England and Ireland, as well as to those born in the country. Their doctrines and form of government were the same. Some of the Churches were confined to certain Provinces, and that was the only distinction that obtained amongst them.

Q. What was their object in forming the said union?

A. Their object was that they might be able to attain the ends which they separately had sought to further more efficiently in their combined condition.

Q. Can you state whether or not the seceders from the Presbyterian Church of Canada in connection with the Church of Scotland, who have already been mentioned by some of the witnesses examined in this cause, who left the said Church in the year eighteen hundred and forty-four, were offered by the Government a share of the proceeds of the Clergy Reserves?

A. As appears from Petitioner's Exhibit "LL," page 413, the ministers that seceded in eighteen hundred and forty-four, and which at that time were refused the continuance of the moneys they had been in receipt of from the Clergy Reserves Fund by the Government on account of the new position in which their Synod stood, that is, that the ministers were no longer ministers of the Synod to which the faith of the Government was pledged, were offered a share in the Clergy Reserves Fund when constituted as the Synod of the Presbyterian Church of Canada.

Q. Is it true, as stated by the said Rev. Robert Dobie, that the members of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, who went to the Victoria Skating Rink on the fifteenth of June, eighteen hundred and seventy-five, in pursuance of the resolutions already referred to, seceded from the Presbyterian Church of Canada in connection with the Church of Scotland?

(Objected to, as being a question of law. Objection reserved by the parties.)

A. It cannot be true that the Synod, acting by the power which inhered in it in resolving to adjourn from one place to another, that the Synod, the greater, seceded from the mere handful of its own members.

Q. Is it not true that the said Rev. Robert Dobie and two or three others who did not go to the said Victoria Skating Rink on the fifteenth of June, eighteen hundred and seventy-five, attempted to form a new Synod of their own, while the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland was still in session and before the union?

*In the
Superior
Court.*

No. 54.

Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued

RECORD.

*In the
Superior
Court.*

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued.

A. It appears from the minutes filed by the Rev. Gavin Lang, and marked Z1, that they assumed to carry on business in St. Paul's Church in defiance of the regulation which provides that the Synod cannot be constituted without fifteen members being present, as well as in defiance of the Synod which had adjourned to the Victoria Skating Rink, that they did.

Q. According to the law and procedure of the said Presbyterian Church of Canada in connection with the Church of Scotland will you be kind enough to state the effect of the deposition of a minister and in what cases such deposition is made?

A. The effect of deposition in all cases is to deprive the minister deposed 10 of his right to perform any ministerial functions. The form of deposition may be found on page 53 of the minutes of eighteen hundred and sixty-nine, of Petitioner's Exhibit "BBB," which is as follows: "In the name of the Lord Jesus Christ, the King and only Head of this Church, and by virtue of the power and authority committed by Him to it, and in the name of this Presbytery, I do now solemnly depose you Mr. A— B—, minister of C—, from the office of the holy ministry, and prohibit and discharge you from exercising the same or any part thereof in all time coming." At page 47 of the minutes of the same year, it is stated in section five, chapter five: "If upon trial a minister shall be found guilty, he shall be admonished, rebuked, suspended from the 20 functions of the ministry, deposed with or without deprivation of Church privileges, or excommunicated, as the Court shall deem fit," the phrase employed "with or without deprivation of Church privileges," meaning "with Church privileges" that the person so deposed still remains in the communion of the Church although deprived of his ministerial rights, "without Church privileges," meaning that he is deprived of his privilege of communicating. The regulations of the Church of Scotland, which are the consuetudinary law of the Synod—the principle of the Synod having always been that in such matters as it had not formed regulations for itself upon, it was to be governed by the principles and practices of the Church of Scotland so far as they were appli- 30 cable to the circumstances of this country—were identical. Deposition is the highest censure in the power of a Church to pass upon a clergyman. Sometimes it is in the form of excommunication, but this is rarely had recourse to. Otherwise deposition in ordinary practice is the highest censure that a Church is able to inflict, and in all cases it takes away from the minister deposed the rights belonging to the office of the ministry, and if afterwards he attempts to discharge any ministerial functions it is at the peril of the displeasure of the Church. It is only inflicted for the very gravest offences—heresy and immorality.

Q. To what extent has the said fund, managed by the Board Respondents, been relieved by death or removal of parties having claims upon it since the date 40 of the said union?

A. In eighteen hundred and seventy-five the number of claimants on the Temporalities Board was one hundred and fifty-five; the number at the date of the entering of this suit was one hundred and thirty-one. The twenty-five must, in the meantime, have either died or lost their claim by removal.

Cross-Examined without waiver of Objections.

RECORD.

*In the
Superior
Court.*No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued.

Q. You have referred several times to the laws and rules of procedure in the Presbyterian Church of Canada in connection with the Church of Scotland ; where are these to be found ?

A. They are to be found in the minutes of Synod for the most part ; and, besides, as I explained in my examination-in-chief, the practice of the Synod always was, when they had not created regulations for themselves in any matter, to be governed by the usages of the Church of Scotland, which were derived from the same source as those of all other Presbyterian Churches, namely, the first and second books of discipline.

Q. In what book can the laws of the Church of Scotland be found ?

A. I do not know that there is any book that has ever been compiled that gives the laws of the Church of Scotland. They are actually contained in the Acts of the Assembly, but the book now produced and filed, marked Petitioner's Exhibit "PP," contains a summary of the practice in the Church up to the date of the compiling of the book ; and also Hill's Practice in the Church Courts contains an admirable summary of the laws and practices of the Church.

Q. Then I understand that the rules and regulations of the Presbyterian Church of Canada in connection with the Church of Scotland, to which you have made particular reference in your examination-in-chief, are to be found either in the minutes of Synod of the said Church filed in this case, or in the book "PP" now filed and referred to in your examination-in-chief ?

A. I think that most of the regulations in practice in the Church of Scotland and in the Presbyterian Church of Canada in connection with the Church of Scotland will be found in these volumes.

Q. Can you call to mind any rule or regulation applicable to the present case which cannot be found in either of said minutes or in the Styles and Procedure now filed ?

A. I cannot recall any other.

Q. You have spoken of a reduction having been made in the annual stipends of clergymen by the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, in which such stipends were reduced from one hundred and twelve pounds to one hundred pounds per annum ; was such reduction ever made in the annual stipends of the clergymen who commuted their claims on the Clergy Reserves ?

A. No reduction was ever attempted of their claim.

Q. Then I understand the reduction was made in the cases which fall under these words in the resolution found on page 8 of the printed Petition in this cause and page 7 of the Synod minutes of January, eighteen hundred and fifty-five, namely : " And that the next claim to be settled, if the fund shall admit, and as soon as it shall admit of it, to the one hundred twelve pounds, ten shillings, be that of ministers now on the Synod roll, and who have been put on the Synod roll, since the ninth of May, eighteen hundred and fifty-three," and they were the ministers of that class whose stipends were reduced to one hundred pounds by the action of Synod.

A. It was.

RECORD.

*In the
Superior
Court.*

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued.

Q. On what then do you found your statements that the fundamental principles on which the fund was established, was altered by the Synod in this reduction, inasmuch as we find in the words of the resolution that all annual stipends payable to such ministers whose stipends were fixed by Synod were subject to the amount of the fund available for that purpose, the words being, "if the fund shall admit, and as soon as it shall admit of it?"

A. Because I know that the fund at the time when the said resolution referred to in the examination-in-chief, and passed on the thirty-first of May, eighteen hundred and fifty-six, found in the minutes of that year, page 22, did admit of their being paid one hundred twelve pounds, ten shillings, and other 10 ministers were admitted to the benefits of the fund in addition, prior to the date I have mentioned.

Q. Had the said ministers whose stipend was fixed at one hundred pounds a year, under the action of Synod referred to on page 22 of the minutes of eighteen hundred and fifty-six, at any time prior to such fixation, an income of one hundred and twelve pounds ten shillings?

A. I cannot say.

Q. Was the stipend of such ministers fixed at the sum of one hundred pounds per annum with their consent?

A. I cannot say.

Q. Do you know of any protest, or objection, or dissent from the fixation of such salaries at one hundred pounds per annum?

A. Unfortunately I was not a member then. I have seen none recorded on the minutes, and I know of none.

Q. The commuting ministers have always received their one hundred and twelve pounds ten shillings a year?

A. I believe they have; so far as I know, they have.

Q. You have referred to the Barrier Act as not calling for any overture with reference to the introduction of any matter of business like the union of Churches in this cause; was there not subsequently a standing order passed by 30 the Synod, which is to be found on page 35 of the minutes of May, eighteen hundred and fifty-nine, and being No. 4 of the said standing orders, to the effect following:—The only way in which any public act or standing order may be competently modified or suspended shall be by the introduction of an overture or petition through the Committee on Bills and Overtures, which overture or petition must detail fully the circumstances in which, and the reasons for which, any modification of the terms or temporary suspension of the operations of any public act or standing order is required?

A. Such a standing order appears to have been passed in eighteen hundred and fifty-nine with regard to the modifying or suspending of public acts or stand- 40 ing orders.

Q. Has that remained in force ever since?

A. It has.

Q. Now, was it not by virtue of a letter read by Dr. Jenkins, a witness in this cause, addressed by Dr. Ormiston to him, and read by him at the Synod of eighteen hundred and seventy, and to be found on pages 31 and 32 of the Synod minutes of that year, that the question of the union of the several Presbyterian Churches was first brought formally before the notice of Synod?

A. It was before the notice of Synod at least half a dozen times previously. On these former occasions I think it was always introduced by overture. On this particular occasion the action taken in eighteen hundred and seventy was upon a letter from Dr. Ormiston, but that action did not necessarily lead to union any more than the action on overtures formerly introduced.

Q. Will you look at the minutes for eighteen hundred and seventy, page 37, and state whether there was not an overture on the same subject read at the Synod of that year, and that the said overture was resolved as unnecessary inasmuch as a committee had been appointed to meet similar committees that might be chosen by other sections of Presbyterians in the Dominion for the purpose of considering the whole subject of union?

A. An overture was presented from the congregation of Lindsay. The overture was not declared unnecessary but further action on the overture was declared unnecessary for the reason that a committee had been appointed on the subject.

Q. Had not said committee been appointed by virtue of the action taken on the letter of Dr. Ormiston to Dr. Jenkins, read as stated in Synod minutes?

A. A committee was appointed immediately after, but I cannot say it was by virtue of it, because it was known that this overture was in the possession of Synod before the committee was appointed.

Q. But the overture was evidently not presented to the Synod till after the committee was appointed?

A. No, apparently not. It was presented to the Synod through its Committee on Bills and Overtures; it was presented to the Synod in the Committee on Bills and Overtures before such action was taken, because all business had to be in the hands of the Committee on Bills and Overtures ten days before the meeting of Synod, or some definite time.

Q. Do you state that from any personal knowledge or from your general knowledge of what ought to be the case?

A. I state from personal knowledge that this overture was in the possession of the Synod before the committee was appointed.

Q. Is there anything on the Synod minutes to show that the overture was in the possession of the Synod prior to the appointment of this committee?

A. I do not know that there is, I find nothing. It is not minuted because business was introduced only in the order in which the Committee on Bills and Overtures advised the Synod to take it up.

Q. Don't you think it was entirely upon this letter of Dr. Ormiston that the action of Synod was taken with reference to union on that occasion?

A. I do not think that the Synod would have taken action on the letter of Dr. Ormiston unless the Synod was convinced that the Church was ready for action.

Q. I do not doubt that, but I mean was the formal action of Synod not taken in the appointment of a committee upon this letter?

A. The action of the Synod in appointing the committee seems to have been taken immediately after the reading of the letter, but the minutes of Synod do not show that it was in virtue of the letter.

RECORD.

In the
Superior
Court.

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued

2.8
2.5
2.2
2.0

01

RECORD.

*In the
Superior
Court.*

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued.

Q. Will you look at the report of the committee so appointed, to be found at page 114 of the Appendix of Synod minutes of eighteen hundred and seventy-one, and do you not there find the following statement: "Extract Minutes of the Supreme Courts of the various Churches, appointing committees were read, "as also a letter of the Rev. Dr. Ormiston, of Hamilton, on the ground of which, "and of the sentiments expressed therein, the said action of this Church was "taken;" and does not such extract express the truth of the matter so far as you are aware?

A. I believe the extract states the truth, and that the letter of Dr. Ormiston was one of the factors leading to action; but I do not believe that it of itself would have led to action unless the known sentiment of the Church would have justified the Church in taking action.

Q. I think you stated that there were overtures before the Synod with reference to the question of union, prior to the reading of Dr. Ormiston's letter to Dr. Jenkins; are there any records of any such overtures to be found in the minutes directly bearing upon the question of union, on which any action of the Synod was taken, and which were followed to a conclusion?

A. Yes; the Synod took action on them all. I have already given them in my examination-in-chief.

Q. But can you state that the union resulted in the end from the action taken on any of these overtures that you have referred to, or did it not result ultimately from the action taken on this letter to Dr. Jenkins?

(Objected to, as illegal and not in issue. Objection reserved by the parties.)

A. The discussions on the overtures that were introduced from time to time, in successive years, prepared the sentiment of the Church for union. Dr. Ormiston's letter seems to have been the immediate occasion of leading to the successful negotiations for union.

Q. How long was union talked about and discussed?

A. As far as our Church and one of the bodies negotiating was concerned, the subject had been talked over for thirty years.

Q. What were the difficulties in the way of union?

(Objected to, as illegal, not in issue, and not arising out of the examination-in-chief. Objection reserved by the parties.)

A. The chief difficulty in the way, in my estimation, was that the sentiment of many members in the several Churches was averse to union. There were really no very serious practical difficulties.

Q. It was a matter, though, of very considerable negotiation before a basis of union could be arrived at?

A. It was.

Q. What were the chief features of that negotiation?

(Objected to, as not in issue, and not arising out of the examination-in-chief. Objection reserved by the parties.)

A. The subjects that occasioned greatest difficulty were, I think—the subject of all others was the college question. Then the question of the proper disposition to make of this Temporalities' Fund in issue in this suit, and the adjustment of the Widows' and Orphans' Fund. These were the three chief difficulties.

Q. Was there no discussion with reference to doctrinal questions in connection with the proposed union ?

A. None whatever.

Q. Was there no difficulty raised with reference to the Confession of Faith, more particularly the twenty-third chapter of it ?

(Objected to, as illegal. Objection reserved by parties.)

A. I don't think the twenty-third chapter of the Confession of Faith was ever mentioned.

Q. Had not the said basis of union to be framed in such a manner as to meet the views of certain of the Churches, or members of the Churches, upon ecclesiastical questions, more particularly upon the question of the twenty-third chapter of the Confession of Faith ?

(Objected to, as illegal and not arising out of the examination-in-chief. Objection reserved by the parties.)

A. Difficulties were raised on the part of some in one of the negotiating Churches on asking that something should be inserted, not in the basis of union but in the preamble, as to the headship of Christ, but the twenty-third chapter was never mentioned so far as I know.

Q. How do you account for the clause referring to the power and duty of the Civil magistrate being introduced into the said basis of union ?

(Objected to, as illegal and not in issue, and not arising out of the examination-in-chief. Objection reserved by the parties.)

A. Some parties to the negotiation for union had the opinion that a portion of the Confession of Faith might be construed to allow intolerent principles. The Synod of the Presbyterian Church of Canada in connection with the Church of Scotland did not believe that said portion of the Confession of Faith could be rightly interpreted to justify persecuting principles, and therefore they had no difficulty or hesitation, so far as they were concerned, in declaring that they believed that said portion of the Confession of Faith did not sanction any principles or views inconsistent with full liberty of conscience in matters of religion.

Q. You are one of the members who enjoy a stipend from this fund ?

A. Yes, I have up till the thirtieth of June last been in the receipt of one hundred dollars each half year. Dr. Jenkins has one hundred dollars each half year, and Professor Mackerras, being one of the commuting ministers, is in receipt of two hundred and twenty-five dollars each half year.

The examination of the witness is adjourned.

And on this eighteenth day of July in the year aforesaid, re-appeared the said witness, Rev. Robert Campbell, and continued his evidence in cross-examination as follows :

Q. You are the minister of St. Gabriel's Church, Montreal ?

A. I am.

Q. What constitutes the congregation of a Church ?

A. It is made up of the families of Presbyterians or individuals in the neighbourhood that choose to connect themselves with the organization.

Q. Supposing that your congregation is eight hundred strong numerically, and that on division five hundred of these should determine to leave your congre-

RECORD.

In the
Superior
Court.

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.

—continued.

RECORD. gation and to join another congregation after a vote taken, would you say that your congregation had joined the other congregation?

*In the
Superior
Court.*

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued.

A. If myself, as minister and the Kirk-session went with them and resolved to go with them, that is, if they went as an organized congregation, certainly they would then join.

Q. I did not understand you to say that the minister constituted part of the congregation in your previous answer; therefore leaving out of consideration the minister, if the five hundred joined the other congregation could you say that your congregation had joined the other congregation under the circumstances mentioned in the last question?

A. Not so long as the Kirk-session and minister remained intact and were acknowledged by the Presbytery.

Q. Supposing the minister and the Kirk-session and five hundred of the congregation joined the other congregation, leaving in round numbers three hundred of your congregation behind in the old place of worship, could you say that your congregation joined the other congregation?

A. Certainly, if it was the result of the vote of the congregation, and the minister and Kirk-session went with them and were acknowledged by the Presbytery, which is an essential.

Q. I think I understood you to say that the congregation was constituted by families and individuals attending the particular Church; if so, how can you make out that if but a portion leave and go to another congregation, leaving an important integral part of the families and individuals behind, that your congregation has joined the other congregation?

A. I did not mean to say that the congregation was composed only of families; I ought to have added that organized under the sanction of the Presbytery, the organization always implying a Kirk-session, wherever the Kirk-session go and are recognized by the Presbytery as the congregation, there the congregation is to be found, notwithstanding that individual families or members may detach themselves from it, as congregations are made up of voluntary associations.

Q. Where do you find any ecclesiastical authority for that opinion?

A. On page 31 of the minutes of eighteen hundred and sixty-three, Petitioner's Exhibit "BBB," the following definition is given of a congregation: "A congregation in the meaning of this Act is the people of any pastoral charge now upon the Synod roll or of any charge which may hereafter be constituted by any Presbytery of this Church."

Q. Has the majority in a Kirk-Session, a Presbytery, or a Synod, or a General Assembly, power to affect the civil rights of individual members of any of those bodies?

(Objected to as not arising out of the examination-in-chief, and no attempt having been made in such examination-in-chief to show that the civil rights were so affected. Objection reserved by the parties.)

A. Certainly not. My view is that the domain of the Church is distinct from that of the State, and that in all civil matters the State is supreme.

Q. In what year were you born?

A. In eighteen hundred and thirty-five.

10

20

30

40

Q. In the early part of your examination-in-chief you have been depending for the authenticity of your evidence on records?

A. Up until about the year eighteen hundred and fifty. My acquaintance with the matters of the Church, I may say, began very early, my father being an elder, and I being set apart for the ministry; at a very early period in my life I took an interest in these questions.

Q. Are you a minister of the Church of Scotland in Scotland?

A. I am not, and never was.

Q. You never had a parish or charge in Scotland?

10 A. Never; I may add that when I visited Scotland as a licentiate of the Presbyterian Church of Canada in connection with the Church of Scotland and offered my license to the Presbytery of Edinburgh, the Presbytery of Edinburgh would not acknowledge me as a licentiate of the Church of Scotland.

Q. Did you have a Presbyterial certificate?

A. A licentiate is not entitled to one; he only carries a document called a license. I was not an ordained minister at that time, I was only a licentiate.

Q. Is a Tunker a Christian?

A. I believe so.

Q. Is he regarded as a Protestant?

20 A. I believe so.

Q. Do you know what are the peculiarities of his religious belief?

A. They are somewhat like those of the Mennonites of Europe, nearly allied to the Quakers of England. They originated after the Reformation in Germany.

Q. In your examination-in-chief you spoke of the late United Synod of the Presbyterian Church of Upper Canada receiving allowances from the Clergy Reserves?

A. I did.

Q. These allowances were received about eighteen hundred and fifty-six?

30 A. I presume they were paid in eighteen hundred and fifty-five, although they are in the returns of eighteen hundred and fifty-six.

Q. The clergymen of that Church, the United Synod of the Presbyterian Church of Upper Canada, affiliated with the Presbyterian Church of Canada in connection with the Church of Scotland, and accepted the standards of the Church of Scotland, did they not, about the year eighteen hundred and forty?

A. They did. But those whose names are mentioned as communiters seceded in eighteen hundred and forty-four and constituted the Presbyterian Church of Canada, which, upon uniting with the United Presbyterian Church in eighteen hundred and sixty-one, was styled the Canada Presbyterian Church.

40 Q. When speaking in the last answer of ministers whose names are mentioned as communiters, which ministers do you mean, of the United Synod of Upper Canada?

A. The Rev. Robert Boyd, Rev. James Rogers, and Rev. Wm. Smart.

Q. However, in eighteen hundred and forty about fifteen ministers of that denomination, the United Synod of Upper Canada, joined the Presbyterian Church of Canada in connection with the Church of Scotland?

A. Seventeen, I think.

RECORD.

In the
Superior
Court.

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued

RECORD.

*In the
Superior
Court.*

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued.

Q. In the Appendix to the Journals of the Legislative Assembly of the Province of Canada, from which you have already cited, containing the names of the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland who commuted their claims upon the Clergy Reserves, do we not find the name of the Rev. Robert Dobie, Petitioner, who is, in said official returns of eighteen hundred and fifty-six, represented as commuting on the basis of a minister who was entitled to a stipend of one hundred and fifty pounds annually, as being of the age (twenty-seven years), and as being entitled to a capital sum of the said Clergy Reserves of two thousand two hundred pounds currency?

A. I do.

Q. You spoke in your examination-in-chief of Lord John Russell having asked the Judges of England for an opinion with regard to the meaning of the term 'Protestant Clergy' and what Churches were entitled to a share in the Clergy Reserves; I understand that you gave the opinion of the Judges returned to Lord John Russell, from memory; is that the case?

A. I did.

Q. Can you tell us for convenience of reference where the opinion may be found in its entirety?

A. It is to be found in a pamphlet written by Sir Francis Hincks, entitled, I think, Separation of Church and State in Canada, or words to that effect. That is the only place where I have seen it. But the opinion is one with which I have been familiar from the time when the Clergy Reserves question was being agitated and before they were secularized in Canada—the substance of the opinion I mean.

Q. Are the case for opinion submitted by Lord John Russell and the opinion returned thereon by the Judges, contained in any of the books filed in this case?

A. Not that I am aware of.

Q. You were the mover of the resolution, I believe, of the fourteenth of June, eighteen hundred and seventy-five, in the Synod declaring the Presbyterian Church of Canada in connection with the Church of Scotland identical with the Presbyterian Church in Canada?

A. I appeared in the report on which action was taken, but was not the mover of the resolution.

Q. Do you know that a similar motion was made and carried in the Canada Presbyterian Church and in the two other Churches that united to form the Presbyterian Church in Canada?

A. I cannot say, but I presume they were.

Q. The Presbytery is composed of the minister of each congregation and a representative elder or elders?

A. It is composed of ministers over charges and a representative from each charge, within certain boundaries.

Q. It is the intermediate body between a Synod and a Kirk-session?

A. It is.

Q. What is its presiding officer called?

A. The moderator, as well as that of a Kirk-session.

Q. What is the recording officer of a Presbytery who keeps the minutes?

A. The recording officer of all the Church courts is called the clerk.

Q. What are the duties of a clerk of Presbytery?

A. His duty is to keep the records, file all papers, and generally to advise congregations that may seek advice on ecclesiastical questions.

Q. When you use the word "advise," you do not intend to say that he is anything more than an executive officer who instructs congregations as to the opinions of the Presbytery?

A. He is supposed to be an ecclesiastical expert and his duty is to give advice when asked, not that this advice is imperative upon congregations.

Q. Is there any rule or regulation of the Church that requires he should be an ecclesiastical expert?

A. The practice of the Church makes it necessary. There is no regulation. Presbyteries in electing their clerk are presumed always to elect a man who understands the forms and laws and practices of the Church.

Q. You spoke of being legal adviser to the Presbytery; I suppose you indulged to a certain extent in a figure of speech, and only meant that you answered such interrogations as were submitted to you in discharge of your duty as Presbytery clerk?

A. I meant that in all matters that come up before the Presbytery it was my duty to acquaint myself with what the laws of the Church stated on those points, and to give the Presbytery the benefit of my information.

Q. Can you produce any ecclesiastical authority to warrant you in saying that you were bound, in the discharge of your duties, as Presbytery clerk, to give legal advice to the Presbytery in all matters coming up before it?

A. There are no legal regulations for the discharge of the duties of clerk in any of the Church courts, as far as I am aware. It is a matter of practice.

Q. Is it not a fact that the main duty of clerk in any of the Church courts, as of a secretary in any corporation, is that he should be an active and efficient officer, well acquainted with the business and correspondence of the body to which he belongs, and able to answer such questions as may be submitted to him with regard to the management of the Presbytery and its affairs generally, either by members of Presbytery or by the members of Kirk-sessions, or by the officers of individual Churches?

A. These are his main duties.

Q. I suppose you are not prepared to say what might be the legal effect of a protest made by a member of Synod against a resolution carried in Synod? I am here speaking of the term legal with reference to its civil meaning?

A. I do not know.

Q. What is supposed to be the effect in the Church courts?

A. A protest in the Synod implies an appeal to a superior court.

Q. And where the Synod is, as it was in the case of the Presbyterian Church of Canada in connection with the Church of Scotland, the Supreme Court of the Church, what would, even ecclesiastically, be the effect of a protest regularly made and entered specifically on the records?

A. In my examination-in-chief I explained that a protest in itself is an incomplete phrase, that the ecclesiastical phrase is "protest for leave to appeal," and it always implies an appeal to a superior court, and therefore a protest, as I also explained in my examination-in-chief, cannot lie against the decision of a supreme court ecclesiastically.

RECORD.

*In the
Superior
Court.*

No. 54.

Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 54.
Deposition
of Rev.
Robert
Campbell,
produced by
Respondents
filed 15th
July 1879.
—continued.

Q. Nevertheless, in the present instance, the protests of the Petitioner and others against the consummation of union, that is to say, the formal protests, are regularly set out in the minutes of Synod, are they not?

A. They are; and I explained also in my examination-in-chief that it was regarded virtually as a dissent, and in that sense was so recorded, as on some previous occasion the word protest had been used in the same sense which I pointed out.

Q. Did not the Church of Scotland, in the early stages of the Presbyterian Church of Canada in connection with the Church of Scotland, make some restriction or regulation about the license of ministers or the qualifications of students for the ministry of the Presbyterian Church of Canada in connection with the Church of Scotland, to which the Presbyterian Church of Canada in connection with the Church of Scotland assented?

A. In eighteen hundred and thirty-three, amongst the advice tendered by the General Assembly of the Church of Scotland to the Synod lately formed in Canada in connection with the Church of Scotland, this was included, after speaking of the action of Presbyteries: "It is not expedient for such Presbyteries in the present state of education in the Colonies, to exercise the power of licensing probationers," and for many years, as a matter of fact, the Presbyteries, here did not license probationers. It was not until the college in connection with the Church was established for the education of ministers in Canada that the Church began to license ministers. In the early history of the Church, everything, as I explained in my examination-in-chief, was tentative, such a thing as a Colonial Church in connection with the Church of Scotland never having been previously planted, and therefore the method of procedure in the Church as in the State, was plastic during the first few years of its history.

Q. Of what Church denomination are you now a minister?

A. I am a minister of the Presbyterian Church in Canada.

Re-Examined without waiver of objections.

Q. You have spoken in your cross-examination about public acts and standing orders; what are public acts and standing orders in the sense used by you, and in the minutes of Synod which you referred to?

A. Public acts are acts designed to regulate the affairs of the Church legal enactments in the proper sense, designed for the regulation of the affairs of the Church in its several courts, passed by the Synod. Standing orders are merely regulation passed for guiding the business of the several church courts.

Q. When you stated in your cross-examination that you considered that in all civil matters, the domain of the State was supreme, did you intend to imply in any way, that the said Synod had no right or control over the Temporalities of the Church or of congregations?

(Objected to, as illegal on re-examination. Objection reserved by the parties.)

A. I did not.

And further deponent saith not, and this deposition having been read to him, he declares it to contain the truth.

S. A. ABBOTT, Stenographer.

Schedule No. 70.

RECORD.

*In the
Superior
Court.*No. 55.
Deposition
of Rev.
Gavin Lang,
produced by
Respondents
filed 15th
July 1879.

On this fifteenth day of July in the year of our Lord one thousand eight hundred and seventh-nine, personally came and appeared Reverend Gavin Lang, minister of St. Andrew's Church in the city and district of Montreal, aged forty-three years, and witness produced on the part of the Respondents who being duly sworn depose and saith:

Q. Are you the same Rev. Gavin Lang who, on the fourteenth of March last, made an affidavit in this cause and who also filed certain minutes herein marked Z1, purporting to be Acts and Proceedings of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. Yes.

Q. Do you know the Rev. Dr. Wm. Snodgrass, formerly member of Queen's College, in Kingston, and now resident in Scotland?

A. I do.

Q. Did the Synod mentioned in the said minutes which you filed marked Z1, and called there the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, ever depose from the ministry the said Dr. Wm. Snodgrass?

A. The Synod did not depose Dr. Wm. Snodgrass from the ministry, but they deposed him from the ministry of the Presbyterian Church of Canada in connection with the Church of Scotland, that is, they declared him no longer a minister of that particular Church.

Q. The reference to that subject is to be found on page 14 of those minutes, is it not?

A. Yes, and further pages.

Q. Is it not true that in the said minutes it is thereby declared that the said Dr. Snodgrass and other ministers who joined the Presbyterian Church in Canada are deposed from the ministry of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. I believe it is.

Q. You were present, I think, at the meeting of the said Synod?

A. I was.

Q. How then do you reconcile the said minute with your statement made under oath in the said affidavit which I have referred to, to wit; "And it is not true but false that the said Dr. Wm. Snodgrass was ever deposed from the ministry by the Presbyterian Church of Canada in connection with the Church of Scotland, or that an official announcement to that effect was ever sent or authorized to be sent by the Presbyterian Church of Canada in connection with the Church of Scotland?"

A. It is very easily reconciled. There are two kinds of deposition—two classes or kinds of depositions; there is the deposition which consists of deprivation of the office of the ministry altogether, what may be called stripping a man of his gown; and there is a class or kind of deposition which consists of merely declaring a man no longer a minister of that particular church or body, without deposing him from the ministry. In the minutes of Synod for eighteen hundred and sixty-seven, memoranda, page 58, there is an instance of a deposition which

RECORD.

*In the
Superior
Court.*

No. 55.
Deposition
of Rev.
Gavin Lang,
produced by
Respondents
filed 15th
July 1879.
—continued.

did not go beyond, simply declaring the person there mentioned no longer a minister of that particular Church or body. That is the case of the Rev. Mr. Macmorine. In the memoranda of Synod minutes for eighteen hundred and seventy-one, page 50, there is a case of deposition which consists of the deprivation of the office of the ministry, or, as it is called, stripping a man of his gown. That is the case of Rev. W. M. Inglis. There is provision in the polity of the Church for such cases. In the minutes of eighteen hundred and sixty-nine, page 47, section three, chapter six, there is this provision in the polity: "When a member, elder or minister shall renounce the communion of the Church by joining another denomination without a regular dismissal, if the denomination be evangelical and he be in good standing, the irregularity shall be noted in the records of the Court having jurisdiction, and his name erased." That applies to Mr. Macmorine's case. In the minutes of the same year, page 47, section five, of page 5 of the polity is to be found this provision: "If upon trial a minister shall be found guilty he shall be admonished, rebuked, suspended from the functions of the ministry, deposed with or without deprivation of Church privileges, or excommunicated, as the Court shall deem fit." If any announcement was made of Dr. Snodgrass' deposition it was unofficial and unauthorized.

Q. Nevertheless you have sworn in said affidavit that it was false that Dr. 20 Snodgrass was deposed from the ministry, and the said minutes show that he was deposed from the ministry of the said Church, and of the only Church that the said Synod professes to have power over; how, then, do you undertake to reconcile your two statements?

A. I have already explained how the statements are reconciled by a reference to the two classes of deposition.

Q. Seeing that in your affidavit there is no reference to two classes of deposition, but you have made the statement that Dr. Snodgrass never was deposed from the ministry, do you mean now to say and to persist in the statement that he never was deposed by the said Synod referred to in the said minutes Z1? 30

A. I never said such a thing, I have already stated that he was not deposed from the ministry by the Presbyterian Church of Canada in connection with the Church of Scotland, and have already fully explained as to the two classes of deposition.

Q. What, then, was he deposed from if he was not deposed from the ministry?

A. He was deposed from the ministry of the Presbyterian Church of Canada in connection with the Church of Scotland, that is, he was declared no longer a minister of that particular Church or body.

Q. Then was he not deposed from the ministry of that Church? 40

A. He was declared no longer a minister of that particular Church.

Q. But if the minutes say he was deposed from the ministry of that Church, how can you swear that he was not deposed from the ministry?

A. I never swore he was not deposed from the ministry of the said Church.

Q. Do you swear he was not deposed from the ministry?

A. I have already explained the two kinds of deposition.

Q. Could the said Synod depose him from any other ministry but the ministry of the Church which they assumed to belong to, to wit, that called the Presbyterian Church of Canada in connection with the Church of Scotland?

A. They could for immorality or other cause proved depose him from the ministry altogether.

Q. Could they depose him from the ministry of the English Church?

A. They have no jurisdiction over the English Church.

Q. Then, they could only depose him from the ministry of their own Church?

10 A. They could depose him from the ministry altogether for cause shown and proved.

Q. If he was only a minister of the Church in question could they depose him from the ministry of any other Church?

A. They could depose him from the ministry of the Church to which he originally belonged, as in the case of Mr. Inglis, of Kingston, for immorality and for other cause proved.

Q. Now, is it not a fact that they could only depose a minister from the Church over which they had power?

20 A. They could depose him from the ministry altogether, which, of course, deprives him of his gown.

Q. But how do you mean "the ministry altogether?"

(Petitioner objects to the entire examination respecting the deposition of the Rev. Dr. Snodgrass, as being irrelevant to the issues, and only waive argument on the objection owing to the absence of a Judge. Objection reserved by parties.)

A. I refer to my explanation of the two classes of deposition.

30 Q. Now, will you kindly point out from the minutes of Synod of the said Church, any rule or law which authorise the deposition of a minister from the ministry, unless such minister is thereby deprived, as you say, of his gown, or of his privileges as a minister, and of all his ecclesiastical functions?

(Objected to, as illegal and irrelevant to the issues. Objection reserved by the parties.)

A. I have already referred to section three of chapter six of the polity of the Presbyterian Church of Canada in connection with the Church of Scotland, on page 47 of the minutes of Synod for eighteen hundred and sixty-nine, which answers the question.

40 Q. Is it not the case that in the said section you have quoted, section three, there is only one kind of deposition spoken of, namely, this: "That if the denomination that the minister joins be heretical, he may be suspended, excommunicated, or deposed, without trial, any further than the Court's ascertaining and recording the fact of his joining the said denomination," and does not such deposition convey the loss of the rights which you have spoken of?

A. Part of the section alluded to relates to heretical denominations.

Q. Does not the word "deposed" there convey only the sense that you have alluded to, namely, that if a minister be deposed under that section, he loses his privileges and his gown?

A. That part of the section has a diametrically opposite reference to the

RECORD.

In the
Superior
Court.

No. 55.

Deposition
of Rev.
Gavin Lang,
produced by
Respondents
filed 15th
July 1879.
—continued.

RECORD. former part, the one alluding to secession to an evangelical denomination, and the other to a heretical denomination.

*In the
Superior
Court.*

No. 55.
Deposition
of Rev.
Gavin Lang,
produced by
Respondents
filed 15th
July 1879.
—continued.

Q. You have not answered my question; kindly state, if you can show that the word "deposition," or the word "depose," is used in the said minutes in any other sense except in the sense of deprivation of privileges, and of the minister's gown, to use your own expression?

A. The word deposition appears there in an entirely different connection.

Q. Then in what connection does it appear?

A. I have already explained, it applies to a secession to a heretical denomination, instead of an evangelical.

Q. Certainly, but is it not a fact that a person under that section seceding to a heretical denomination, would thereby be liable to be deposed and deprived of his gown, and all his ecclesiastical privileges?

A. I am not prepared to say.

Q. Do you mean to say that a man found guilty of heresy would simply be declared no longer a minister of the Church and is not liable to be deposed from the office of the ministry in the Church to which he belongs?

A. There is a difference between trial for heresy and joining a heretical denomination.

Q. What is the difference?

A. I am not prepared to say.

Q. Can you point out any other law which justifies you in saying that the word 'deposed' is used, according to the practice of the Presbyterian Church, in two senses?

A. I have already referred to the fifth section of the fifth chapter of the Polity of the Presbyterian Church of Canada in connection with the Church of Scotland on page 47 of Synod minutes of eighteen hundred and sixty-nine, which gives the other class of deposition.

Q. What are the words there?

A. "If upon trial a minister shall be found guilty, he shall be admonished, rebuked, suspended from the functions of the ministry, deposed, with or without deprivation of Church privileges, or excommunicated, as the court shall deem fit."

Q. If a minister is deposed in the sense you have last mentioned, with Church privileges, is he not, nevertheless, a deposed minister?

A. I am not sufficiently acquainted with the intricacies of the question, but the reference in the section above cited is to immorality or other personal misconduct.

Q. What do you mean by deposition with Church privileges in such a case? not a man deprived of his gown?

A. It is a matter for the Synod to determine.

Q. Then you do not know?

A. I am not prepared to say how the Synod would look at any case or cases.

Q. Are you prepared to say whether such a deposition as last referred to, with church privileges, would not, as a matter of church law and procedure, involve the loss of the minister's gown as long as that deposition was in force?

A. It would rest with the Synod or Presbytery to say so.

10

20

30

40

Q. You have stated that no official intimation as to the deposition of the Rev. Dr. Wm. Snodgrass was sent to Scotland; will you please state whether any intimation whatever was authorized to be sent?

A. Not that I know of.

Q. Do you know the Rev. Robert Burnet, of whom you have already spoken as clerk of the said Synod?

A. I do.

Q. Do you know his handwriting?

A. I think so.

10 Q. Will you be kind enough to look at the letter now shown to you, a copy of which is now entered in this deposition by the clerk, and state whether or not you recognize the handwriting of the same?

" London, Ontario, Dominion of Canada,
" 2 Oct. 1877.

" To the Reverend Moderator of the Presbytery of Langholm :

" Dear Sir,—I am directed by the Synodical Commission of the Presbyterian Church of Canada in connection with the Church of Scotland to represent to the Presbytery of Langholm that we have heard with deep regret of the presentation of the Very Reverend Principal Snodgrass to the parish of Canonby.

20 " Principal Snodgrass, as a minister of this Church and head of Queen's College at Kingston, has made himself most active in attempting to obliterate the honored name of the Church of Scotland in this Colony—in fact, has almost succeeded. If it be a sin and crime to deny the Church, he is verily guilty and ought not to have the opportunity effectually to do in Scotland what he has done in Canada—overthrow the Church.

" The Very Revd. Principal has been deposed from the office of the ministry in our Church. He was set and part in the consummation of the union recently accomplished between the Church here and the bitterest enemies of the Church of Scotland in any of the Colonies belonging to Great Britain.

30 " I may add that the public opinion of the Free Church regarding Principal Snodgrass, (or what those of us attached to the Church of Scotland call 'the logic of events') has driven Dr. Snodgrass from his sphere of labor in Canada, as it has already driven many ministers lately belonging to the Church of Scotland from their congregations. We in Canada, Churchmen and Scottish Churchmen, would be recreant to our Church and to our principles did we not thus publicly protest against the induction of the Rev. Principal Snodgrass into any parish in Scotland.

" In name and by authority of the Commission of the Presbyterian Church of Canada in connection with the Church of Scotland.

" ROBERT BURNET,
" Clerk of Synod and of Commission."

A. I recognize the handwriting.

Q. Whose is it?

A. It is the handwriting of the Rev. Robert Burnet.

Q. Is it his signature?

A. It is his signature.

RECORD.

—
In the
Superior
Court.
—

No. 55.
Deposition
of Rev.
Gavin Lang,
produced by
Respondents
filed 15th
July 1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 55.
Deposition
of Rev.
Gavin Lang,
produced by
Respondents
filed 15th
July 1879.
—continued.

Q. Did you ever see that letter before ?

A. Never.

Q. Were you a member of the Synodical Commission of the said Synod in the year eighteen hundred and seventy-seven ?

A. I suppose I must have been. I do not remember anything about the Commission.

Q. Do you know where the minutes of said Commission were kept ?

A. I have nothing to do with the minutes.

Q. Was it not clearly understood, either by the said Synod or by the said Synodical Commission, that following up the said resolution, which has already 10 been referred to, occurring in the said minutes with reference to the deposition of the said Dr. Snodgrass, that the said clerk was to send either an extract from the said minutes or an intimation of such deposition to Scotland ?

A. Most certainly not.

Q. If you have not the said minutes in your possession, and were not present at all the meetings of the said Synodical Commission, how can you undertake to swear that it was not so understood or agreed to ?

A. I never said any such thing. Don't put words in my mouth that I did not use. I never said that I had not the minutes of Synod in my possession. I was under the impression that you were asking about the minutes of Synod 20 and not of the Synodical Commission. And I never said that I was not at the meetings of Commission.

Q. Have you the minutes of the said Synodical Commission in your possession ?

A. No.

Q. Do you know where they are ?

A. I have no personal knowledge. I fancy they must be among the archives of the Church.

Q. Who is the custodian of the said minutes ?

A. I fancy, in most cases, the clerk of Synod. 30

Q. In this case I want to know ?

A. I cannot tell.

Q. Were you present at all the meetings of the said Synodical Commission ?

A. I fancy I was.

Q. Then do you state positively that said Synodical Commission never authorized the Rev. Robert Burnet, clerk, to send an intimation to Scotland to the Moderator of the Presbytery of Langholm, to the effect that Dr. Snodgrass had been deposed, as stated in the said minutes ?

A. Most positively. 40

Q. Then do you state that the Rev. Robert Burnet has stated what is false in the said letter which you have just identified, when he says : " I am directed " by the Synodical Commission of the Presbyterian Church of Canada in connection with the Church of Scotland to represent to the Presbytery of Langholm, " etc., etc." ?

(Objected to, as illegal and unfair, on the part of the counsel in attempting to make it appear that the witness stated that the contents of said letter were

untrue, whereas the answers of the witness would go to imply that the sending of its contents was unauthorized. Objection reserved by the parties.)

A. I have never seen the letter till now and have not read it.

Q. Question repeated.

A. I am not called upon to state anything of the kind.

Petitioner objects to the illegality and the irrelevancy of all the foregoing examination, and relying upon said objection, and the objections entered *seriatim* through the record, declines to cross-examine the witness.

And further deponent saith not, and this deposition having been read to him, he declares it to contain the truth.

S. A. ABBOTT, Stenographer.

In the
Superior
Court.

No. 55.
Deposition
of Rev.
Gavin Lang,
produced by
Respondents
filed 15th
July 1879.
—continued.

Schedule No. 71.

Canada,
Province of Quebec, } Superior Court.
District of Montreal. } No. 2100.

The Rev. Robert Dobie, - - - - - Petitioner.

vs.

20 "Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland," *et al.*, - - - - - Respondents.

List of Exhibits filed by Petitioner in this case upon the case generally and in support of his answer to the petition to dissolve and suspend the writ of injunction herein and on the merits of the case.

EXHIBIT BBB. Three volumes comprising the Minutes from 1831 to 1875 of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland. (Filed with former List.)

EXHIBIT LL. Digest of the Synod Minutes of the Presbyterian Church of Canada. (Filed with former List.)

30 EXHIBIT MN. Protest served by Petitioner, Joseph Hickson and others, upon the moderator of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland against a union with other Churches. (Filed with former List.)

EXHIBIT CC. Pamphlet entitled "Faults and Failures of the late Presbyterian Union in Canada, by Douglas Brymner." (Filed with former List.)

EXHIBIT EE. Acts and Proceedings of the first General Assembly of the Presbyterian Church in Canada. (Filed with former List.)

No. 56.
Petitioner's
List of
Exhibits,
filed 1st
August
1879.

RECORD. EXHIBIT KK. Missionary Record 8 Church of Scotland, containing announcement of the appointment of Petitioner as a minister. (Filed with former List.)

*In the
Superior
Court.*

No. 56.
Petitioner's
List of
Exhibits,
filed 1st
August
1879.

—continued.

EXHIBIT FF. Historical and Statistical Report published by order of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland. (Filed with former List.)

EXHIBIT DD. Cyclopædia of Religious Denominations, containing authentic accounts of the different Creeds and Systems prevailing throughout the world, written by members of the Presbyterian bodies. (Filed with former List.)

10

EXHIBIT PP. Styles and Procedure in the Church Courts of Scotland.

EXHIBIT X. Blank form of cheque, used by the Temporalities Board of the Presbyterian Church of Canada in connection with the Church of Scotland.

EXHIBIT Z1. Acts and Proceedings of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland on and since June 15, 1875.

EXHIBIT Z2. Letter to the Rev. Gavin Lang, from the Rev. R. H. Muir, on behalf of the Colonial Committee of the Church of Scotland, recognizing the Presbyterian Church of Canada in connection with the Church of 20 Scotland.

EXHIBIT Z3. Letter from Rev. G. W. Sprott to Rev. Gavin Lang.

EXHIBIT Z4. The Confession of Faith and Larger and Shorter Catechisms, containing also the form of Presbyterial Church government.

EXHIBIT Z5. Extracts from the Acts and Proceedings of the General Assembly of the Church of Scotland.

EXHIBIT Z6. Pastoral charge of the Rev. Dr. Jenkins, as Moderator of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland in 1869—in which, at page 5—He styles the Presbyterian Church of Canada in connection with the Church of Scotland 30 as the "Church of Scotland."

1st August, 1879.

MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioners.

(Endorsed.)

Petitioner's List of Exhibits—filed 1st August, 1879.

Schedule No. 72½.

RECORD.

*In the
Superior
Court.*

No. 57.
(Petitioner's
Exhibit X.)
Blank form
of cheque,
used by the
Temporalities Board
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland,
filed 1st
August
1879.

  	No.
	The Temporalities' Board of the Presbyterian Church of Canada in connection with the Church of Scotland.
	MONTREAL.....187
	To the Cashier of the MERCHANTS BANK OF CANADA,
	Pay to.....or order,
	Dollars
	 Chairman.
	 Secretary.
The Burland-Desbarats Lith. Co. Montreal.	

(Endorsed.)

Petitioner's Exhibit "X" at enquête—filed 1st August 1879.

(Paraphed) G. H. K., Dep. P.S.C.

Schedule No. 73.

At Montreal, and within St. Paul's Church, there, Tuesday
the fifteenth day of June, one thousand eight hun-
dred and seventy-five years :

The which day, the Synod of the Presbyterian Church of Canada in connec-
tion with the Church of Scotland, met according to adjournment and was consti-
tuted with prayer.

The minutes of yesterday were read and approved of.

Whilst the meeting was in session, Charles Cushing, Esq., notary public,
entered, and addressing the moderator then in the chair, read a protest against the
moderator, and any other members of the Synod leaving the Church to repair to
the Skating Rink for the purpose of joining another ecclesiastical body or bodies,
in violation of the rights of those who remained as members of the Presbyterian
Church of Canada in connection with the Church of Scotland.

Shortly thereat the moderator and others left the place of meeting in
pursuance of a resolution passed yesterday, against which a protest was recorded,
signed by the Rev. Robert Dobie and others.

True copy, GAVIN LANG.

No. 58.
(Petitioner's
Exhibit Z1)
Ac's and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

RECORD.

*In the
Superior
Court.*

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

On the moderator vacating the chair, the Rev. Robert Dobie, ex-moderator of the Synod, took the chair in accordance with the usages and laws of the Church, and in view of the solemn circumstances in which the Synod was placed by the withdrawal of many of the brethren, engaged in prayer for the Divine guidance.

The Rev. Robert Burnet was requested to act as clerk, *pro temp.*

The Rev. Hugh Niven, retired minister, and Mr. Douglas Brymner, being present, were invited to sit and deliberate.

It was moved by Mr. Burnet and seconded by Mr. John Macdonald, that the following committee be appointed to draw up a letter to the Colonial Committee of the Church of Scotland, thanking them and that Venerable body, for the words of encouragement sent to this Synod, in their recent deliverance, viz: Mr. David Watson, Mr. Douglas Brymner, Mr. Brodie, Mr. John Macdonald, Mr. Thos. Macpherson, Mr. William Simpson, and Mr. Robert Burnet, which was agreed to.

It was ordered that a letter be prepared and circulated among the members and adherents of the Church, stating the present circumstances: The moderator, clerk, Mr. D. Watson, and Mr. Brodie to be the committee for this purpose.

The following committee was appointed to watch over the legal rights and interests of the Church, and to co-operate with similar committees in the Lower Provinces; Mr. Robert Burnet, Mr. J. S. Hunter, Mr. Douglas Brymner, Mr. William McMillan, Mr. T. A. McLean, with power to add to their number.

The Rev. Gavin Lang, of St. Andrew's, Montreal, now in Scotland, was appointed to represent the Church before the Colonial Committee of the General Assembly.

It was agreed to sanction the publication of a monthly periodical, to represent the position of the Church, and to be a means of communication among the different congregations.

It was proposed and agreed to unanimously, that the protest lodged yesterday against the resolution to repair to the Victoria Hall, for the purpose of consummating the proposed union with other Presbyterian bodies be engrossed in the minutes.

The protest is in these terms:—

We, ministers and elders, members of this Synod, heartily attached to the Church, hereby dissent from the resolution of this court to repair to the Victoria Hall for the purpose of consummating the proposed union with the other Presbyterian bodies, and thereby to form the General Assembly of the Presbyterian Church in Canada. We further protest against the declaration that the United Church shall be considered identical with the Presbyterian Church of Canada in connection with the Church of Scotland, inasmuch as this Synod has no power *per saltum*, to declare other bodies in addition to itself to be possessed of the rights, privileges and benefits to which this Church is now entitled. We declare, therefore, our continued attachment to the Presbyterian Church of Canada in connection with the Church of Scotland, and do hereby enter our protest against the empowering of the present moderator to sign in its name the preamble and basis of union and the resolutions connected therewith. And further, we ministers and elders of this Synod, holding views opposed to union on the present basis, do protest against the carrying out of the contem-

True copy, GAVIN LANG.

plated arrangements for the consummation of the proposed union, and declare, RECORD.
that if consummated, we will claim and continue to be the Presbyterian Church
of Canada in connection with the Church of Scotland.

In the
Superior
Court.

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

ROBERT DOBIE,
WM. SIMPSON,
ROBERT BURNET,
DAVID WATSON,
J. S. MULLAN.
W. McMILLAN,
THOMAS MACPHERSON,
RODERICK MCCRIMMON,
JOHN DAVIDSON,
JOHN MACDONALD.

It was then agreed that the Synod should meet on the call of the modera-
tor within a limited period, and the court was then dissolved, in the name of the
Lord Jesus Christ, the great and only Head of the Church and nation. The pro-
ceedings terminated with praise and the benediction.

(Signed,) ROBERT DOBIE, Moderator.

ROBERT BURNET, Clerk.

St. Andrew's Church, Montreal, the thirtieth day of
November, eighteen hundred and seventy-five:

The which day the Synod of the Presbyterian Church of Canada in connec-
tion with the Church of Scotland, met, according to adjournment, on the call
of the moderator, and was constituted with prayer by the Rev. Robert Dobie,
moderator, minister of Milton.

Sederunt: Rev. Robert Dobie, moderator; Mr. John Davidson, Mr. Peter
Watson, Mr. Thomas Macpherson, Mr. Neil Brodie, Mr. John Macdonald, Mr.
Wm. Simpson, Mr. Gavin Lang, Mr. David Watson, Mr. Robert Burnet, minis-
ters; Mr. William McMillan, Mr. Geo. Brockie, Mr. Roderick McCrimmon, Mr.
30 Roderick McLeod, Mr. John Anderson, elders.

The moderator's conduct in calling the meeting was unanimously approved of.
The minutes of the meeting of Synod, in June last, in so far as these relate
to the proceedings of the fifteenth day of June, as herein entered, were read and
sustained.

Mr. Robert Burnet, who had acted as *interim* clerk, was appointed clerk of
the Synod.

It was moved by Mr. Brodie, seconded by Mr. Macpherson, and agreed to,
that the Presbytery of Montreal have permission to meet on the call of the Rev.
Mr. Lang, after the close of this diet.

40 The moderator invited the Rev. F. P. Sym, Mr. D. Brymner, Mr. J. S.
Hunter and Mr. Thomas A. McLean, elders, to sit and deliberate with the
court.

Mr. T. A. McLean made a satisfactory statement in reference to his inter-
course with the Convener of the Colonial Committee of the Church of Scotland,
and Mr. Lang gave a brief *résumé* of his visit to Scotland, in so far as it referred
to his delegation by the Church.

True copy, GAVIN LANG.

RECORD.

*In the
Superior
Court.*

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

The Synod resolved that the boundaries of the several Presbyteries of this Synod be as follows, viz.: The Presbyteries of Quebec and Montreal to become the Presbytery of Montreal, having the Presbytery seat in Montreal; Perth, Ottawa and Kingston to be joined to the Presbytery of Glengarry, with the Presbytery seat at Lancaster; Victoria, Toronto, London and Saugeen to be joined to the Presbytery of Hamilton, with the Presbytery seat at Hamilton.

It was resolved that a petition be forwarded to His Excellency the Governor-General, signed by the moderator and clerk, requesting that assent be not given to the Acts passed by the Legislatures of the Provinces for the union of certain Presbyterian bodies, and other Acts bearing thereon, and that Mr. Lang, Mr. Douglas Brymner, Mr. R. G. Cassels, be appointed a committee to present the same. 10

The Synod resolved that the following members be appointed a committee, with Synodical powers to mature measures for the meeting of Synod in June next, to visit congregations desiring advice and assistance, to collect means for defraying legal and other Synodical expenses, and generally to undertake all business of the Church requiring immediate attention, and to report to the next meeting of Synod, the following to be the names of the committee: The Very Rev. the Moderator, Revds. Thos. McPherson, Wm. Simpson, John Davidson, John Macdonald, David Watson, Peter Watson, Robert Burnet, Neil Brodie, Gavin Lang, Mr. William McMillan, Roderick McLeod and Roderick McCrimmon; the committee being empowered to add to its number, and with power to take measures to obtain books and other property belonging to the Church.

A vote of thanks was unanimously passed to the trustees of St. Andrew's Church for their courtesy and kindness to the Synod during the present meeting. 20

The Synod was then dissolved by the moderator in the name of the Lord Jesus Christ, to meet at Montreal on the second Tuesday in June next, in St. Andrew's Church, at seven thirty in the evening.

(Signed) ROBERT DOBIE, Moderator. ROBERT BURNET, Clerk of Synod.

Acts and Proceedings of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, begun at Montreal on the thirteenth day of June, and concluded on the fourteenth day of June, in the year of our Lord one thousand eight hundred and seventy-six.

SESSION 50.

Diet I.

At Montreal, and there within St. Andrew's Church, the thirteenth day of June, eighteen hundred and seventy-six; 30

The which day after sermon by the Rev. Robert Dobie, minister of Milton, moderator of Synod for the preceding year, from cxxxvii. Psalm, 5th verse: "If I forget thee, O Jerusalem, let my right hand forget her cunning," the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, met according to appointment and was by him constituted with prayer.

Presbytery rolls having been given in, the Synod roll was made up and read over.

True copy, GAVIN LANG.

Sederunt : Mr. Robert Dobie, moderator ; Mr. Wm. Simpson, Mr. John Macdonald, Mr. Gavin Lang, Mr. Thomas Macpherson, Mr. Peter Watson, Mr. John Davidson, Mr. Neil Brodie, Mr. David Watson, Mr. Robert Burnet, Mr. John Moffat, ministers ; together with Mr. John Anderson, Mr. Angus McKay, Mr. J. S. Hunter, Mr. Roderick McCrimmon, Mr. Allan Cameron, Mr. Finlay McQuaig, Mr. John McLeod, Mr. Donald McKay, Mr. Thomas Miller, Mr. James Wright, Mr. Donald Cameron, and Mr. Geo. Brockie, elders.

It was moved by Mr. Lang, seconded by Mr. Brodie, and agreed to, that the Rev. D. Watson, M.A., minister at Thorah, be moderator for the year, and he being present, took the chair.

It was unanimously agreed that the thanks of the Synod be given to the Rev. Robert Dobie for his whole conduct during the year, and also for his admirable sermon delivered this evening.

The Synod proceeded to the election of three trustees of Queen's College, Kingston, in the room of William Bain, D.D., David Watson, M.A., and D. J. Macdonnell, M.A., B.D., who retire pursuant to the terms of the Royal Charter.

It was unanimously agreed to elect the Rev. Thomas Macpherson in room of William Bain, D.D. ; the Rev. John Davidson in room of the Rev. D. J. Macdonnell, and to re-elect the Rev. David Watson, as members of the Board of Trustees of Queen's College.

The Synod proceeded *ex necessitate*, see page 12, section 3, of the second Book of Polity, to elect the following clerical members of the Board of Trustees of Queen's College, viz. : Mr. Neil Brodie, Mr. Peter Watson, Mr. Robert Dobie, Mr. Robert Burnet, Mr. John Moffat, in room of the Rev. Robert Neil, D.D., Mr. Donald Ross, M.A., B.D., Mr. Neil McNish, B.D., LL.D., Mr. Kenneth Maclellan, M.A., Mr. George Bell, LL.D., Mr. John Jenkins, D.D., and Mr. D. M. Gordon, M.A., B.D., who have voluntarily joined the Presbyterian Church in Canada.

The Synod proceeded to elect for managers of the Temporalities Fund, in room of those who retire, pursuant to the terms of the Act of Incorporation, when on motion duly moved and seconded, it was unanimously agreed to elect Mr. Robert Leckie and Dr. G. W. Campbell, in room of Judge Dennistoun and Mr. William Walker, and the Rev. David Watson and the Rev. Thos. Macpherson, in room of the Rev. Gavin Lang and the Rev. John Jenkins.

The Synod also re-constituted the remaining portion of the managers, and re-elected the Rev. Gavin Lang, and elected the Rev. John Macdonald, the Rev. John Davidson, Mr. Joseph Hickson, Mr. J. S. Hunter, Mr. David Law, Mr. Alex. McGibbon, in room of the Rev. John Cook, D.D., the Rev. D. M. Gordon, the Rev. John H. Mackerras, Mr. J. L. Morris, M. William Darling, Mr. Alex. Mitchell, and Mr. James Michie, who have left the communion of the Church.

Mr. R. M. Esdaile and Mr. George Mathieson of Montreal, were elected auditors, Mr. Douglas Brynmner, Secretary-Treasurer.

An understanding was come to that during the present session, the following be the hours of meeting, viz : in the forenoon from half-past nine till one o'clock ; in the afternoon from half-past two till half-past five ; and in the evening from seven till the close of the diet :

True copy, GAVIN LANG.

RECORD.

In the
Superior
Court.

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

The Synod proceeded to appoint the following committees, viz :

I. On Bills and Overtures. The moderator, convener, the ex-moderator, the clerk, Mr. Neil Brodie, Mr. John Davidson, Mr. John McLeod.

II. On References, Complaints and Appeals, the moderator, convener, Mr. Lang, the clerk, Mr. John McMurchy, Mr. John Macdonald, Mr. John Moffat, Mr. Roderick McCrimmon.

III. To Revise Synod and Commission Records—Mr. J. S. Hunter, convener, Mr. Finlay McQuaig, Mr. James Wright, Mr. Donald Cameron.

IV. To Revise Presbytery Records—Mr. Dobie, convener, Mr. Thos. Macpherson, Mr. Peter Watson, Mr. Roderick McLeod, and Mr. James Clarke.

V. To Draft an Address to the Queen—Mr. Lang, convener, Mr. Dobie, Mr. J. S. Hunter, Mr. James Wright, and Mr. Angus McKay.

VI. To Draft an Address to the Governor-General, Mr. Lang, convener, Mr. Burnet, Mr. Brodie and Mr. Hunter.

VII. On Applications for Leave to Retire from the active duties of the Ministry—Mr. Lang, convener, the moderator, the ex-moderator, Mr. Donald Cameron, Mr. Allan Cameron, Mr. Finlay McQuaig and Mr. John Anderson.

The Examining committee for 1877—The Clerk, convener, the moderator, Mr. Lang, ex-moderator, Mr. Davidson, Mr. Peter Watson, Mr. Neil Brodie.

The Synod proceeded to reconstruct the Board of Management of the Ministers' Widows' and Orphans' Fund as follows: Mr. Brodie, Mr. Simpson, Mr. Lang, Mr. Macpherson, Mr. Robert Cross, Mr. Alex. McGibbon, Mr. Douglas Brymner, Mr. Henry Morgan, Mr. Donald McKay, Mr. Robert J. Reekie, Mr. George Denholm and Mr. David Law.

The minutes of the meetings of the Synodical Committee were read and sustained, and ordered to be printed as an appendix to the minutes of Synod.

The Synod then adjourned to meet to-morrow morning at 9.30 A.M.; after being closed with prayer and praise.

DAV. WATSON, Moderator.

ROBERT BURNET, Clerk.

Diet. II.

Montreal, and there within St. Andrew's Church, Wednesday, the fourteenth day of June, eighteen hundred and seventy-six;

The which day the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, met pursuant to adjournment and was constituted with prayer.

Devotional services were conducted by the Rev. Thos. Macpherson.

The minutes of yesterday's diet were read and sustained.

The Rev. Gavin Lang gave in the report of the Committee on Correspondence with the Colonial Committee of the Church of Scotland.

It was moved, seconded and unanimously agreed to, that the Synod having heard the report, receive and adopt the same, thank the Committee and especially Mr. Lang the convener, and instruct the committee to communicate to the Colonial Committee the expressed views of the Synod on the recent report submitted to the General Assembly and on the deliverance of the General Assembly on the report of the Colonial committee.

True copy, GAVIN LANG.

Mr. Lang laid on the table an application for leave to retire from the active duties, of the ministry from the Rev. Wm. Simpson, minister at Lachine. **RECORD.**

The application was referred to the standing committee.

Mr. McCallum appeared on behalf of the congregation of West King.

A committee consisting of the moderator, Mr. Lang, Convener, Mr. Dobie, Mr. Burnet, Mr. Simpson, Mr. John Macdonald, Mr. J. S. Hunter was appointed to consider this and other similar cases.

The committee on business for last year was appointed the committee for this year.

The report of the committee for leave to retire from the active duties of the ministry was given in, considered and adopted.

The commission of Synod was empowered to give such certification to any members of the court as would authorize them to represent the Synod before the Colonial Committee of the General Assembly.

Mr. Lang presented a verbal report from Queen's College. He stated that the college had received during the year from the Church of Scotland \$2,444.00, and from the Temporalities Board of the Church \$2,975.00.

There was read an extract minute of the Presbytery of Hamilton transmitting an application from the Rev. Alex. Shand, M.D., congregational minister, to be admitted as a minister of this church. A similar application from the same Presbytery was made on behalf of Mr. A. J. Campbell, M.D., of London.

The applications were referred to the Examining Committee.

Application was made by the Presbytery of Hamilton for leave to take Mr. Andrew Watson, student of Divinity, on public probationary trials for license, the usual circular letters having been duly issued. The Synod instructed Mr. Watson to appear before the Examining Committee.

Mr. Burnet was appointed Treasurer for the Synod Fund.

Mr. Lang made a statement with regard to St. John's Church, Montreal.

The Synod unanimously gave their sanction to the action which had been taken by the Rev. Mr. Lang, on the recommendation of his legal advisers, and resolved, that the Rev. Gavin Lang be appointed, as he is hereby appointed by the Synod, to receive the deed of St. John's Church and manse.

It was unanimously resolved, that the Synod, through the moderator, convey to Mr. Douglas Brymner, their hearty thanks for the able and efficient manner in which he has conducted the *Landmark* during the past year, and for the diligence and patience with which he has discharged a large and onerous amount of work for the church.

The Synod desire to record their grateful sense of the munificent donation of \$500.00 made by the late Mr. Edmonstone to the ministers' widows' and Orphans' fund. Mr. J. S. Hunter was appointed Treasurer of the fund and the Synod authorized Mr. Hunter to call on the executors of the late Mr. Edmonstone to receive the legacy, to keep the same at the disposal and order of the Synod, and to collect all sums ordered by the Synod to be paid to the Treasurer by the ministers of the Church.

The cases of London, Bayfield and Eldon, were laid before the Synod and referred to the Synodical Committee on church property.

True copy, **GAVIN LANG.**

*In the
Superior
Court.*

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.
—continued.

RECORD.

*In the
Superior
Court.*

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

There was presented through the Committee on Bills and Overtures, an overture from the Presbytery of Glengarry, craving the Synod to call over the names of the ministers who have withdrawn from this church, who joined the the Presbyterian Church in Canada at the Victoria Skating Rink, to declare them no longer ministers of this Church and depose them from the office of the ministry.

After consideration and deliberation it was determined to refer to the action taken by the Synod in 1844, under similar circumstances and follow the example then set. The minutes of the 23rd September were examined and the course then taken ascertained.

Whereupon, the Synod declared, as they hereby do declare, that those ministers who have joined the Presbyterian Church in Canada, thereby seceding from she Synod, viz: John Cook, D.D., Duncan Anderson, M.A., James McCaul, B.A., Peter Lindsay, B.A., Henry Edmison, M.A., T. Brouillette, George Weir, M.A., Alex. M. McQuarrie, B.A., James Douglass, B.A., James C. Muir, D.D., James Patterson, John Jenkins, D.D., Donald Ross, B.D., R. Campbell, M.A., J. S. Lothead, M.A., Charles Doudiet, W. M. Black, D. W. Morrison. B.A., James B. Muir, M.A., Charles A. Tanner, P. S. Livingstone, B.A., Thomas Fraser, Charles G. Glass, M.A., J. S. Burnet, Robert Lang, B.A., James S. Mullan, Neil McNish, B.D., L.L.D., George Porteous, H. Lamont, D.D., William Ferguson, 20 Alex. Mann, M.A., William Bain, D.D., Solomon Mylne, James Wilson, M.A., Walter Ross, M.A., D. McGillivray, B.A., R. Campbell, M.A., William Cochrane, John Bennet, W. T. Cumming, Elias Mullen, D. M. Gordon, B.D., James Fraser, B.A., D. J. McLean, B.A., Joseph Gardier, Alex. Campbell, B.A., John Fairlie, Frederick Home, Alexander Smith, H. Cameron, James Sinclair, H. J. Borthwick, Robert Neill, D.D., James Williamson, L.L.D., Alexander Buchan, J. B. Mowat, M.A., W. Snodgrass, D.D., J. H. Mackerras, M.A., James Murray Gray, G. D. Ferguson, B.A., M. W. McLean, M.A., Thos. G. Smith, H. D. Steele, Charles J. Cameron, M.A., John Brown, W. E. McKay, B.A., James Carmichael, Walter R. Ross, A. MacLennan, B.A., William Aitken, A. McDonald, B.A., Adam Spenser, 30 Donald Strachan, D. Macdonald, A.M., David P. Niven, B.A., J. Carmichael, M.A., D. J. Macdonell, B.D., Smith Hutchison, James B. Mullen, John Ferguson, B. A. William Cleland, Samuel Porter, Alexander Lewis, William Barr, James Bain, William McKee, B.A., William Barnhill, B.D., Archibald Carrie, M.A., William White, J. Allister Murray, K. MacLennan, M.A., Alexander McKay, M.A., James Cleland, James T. Paul, M. W. Livingstone, James Herald, Charles Campbell, John Hogg, D.D., William Stewart, George A. Yeomans, B.A., E. W. Waits, James C. Smith, M.A., William Masson, James Pullar, Alexander Forbes, Robert G. McLaren, B.A., Joshua Fraser, B.A., John Rannie, M.A., Hamilton Gibson, James Gordon, M.A., David Camelon, James Sieveright, B.A., 40 J. S. Enkin, B.A., William T. Wilkins, B.A., John B. Taylor, Hugh Cameron, J. J. Cameron, M.A., William Johnson, M.A., James McEwen, M.A., Donald Macdonald, M.A., D. Morrison, M.A., Donald Fraser, M.A., E. B. Rodgers, W. Anderson, M.A., John Gordon, B.A., Malcom M. McNeil, Geo. Bell, L.L.D., are no longer ministers of the Presbyterian Church of Canada in connection with the Church of Scotland in Canada, and that they are hereby deposed from the ministry of said Church.

True copy, GAVIN LANG.

Further, the Synod agree to record the expression of the grief of the members present at reading the names seriatim, and at declaring those who have seceded from our Church no longer ministers thereof, in terms of Chapter VI. section 1, of the Polity of this Church and after the example of the Synod of 1844. Chapter VI "of case without process" provides :—

First:—when an individual commits an offence in the presence of the Court, or when he voluntarily confesses his guilt, it is competent to the Court to proceed to judgment without process, the offender having the privilege of being heard. The record must show the nature of the offence, the judgment of the Court, and the reasons thereof. (See Acts and Proceedings of Synod, Montreal, Monday, September 23rd, 1844.)

There was transmitted and read an overture from members of the Presbytery of Glengarry, craving the Synod to appoint a Home Mission Board to and in furthering the temporal and spiritual interests of the Church.

Mr. Neil Brodie was heard in support of the overture. After discussion, it was moved and agreed to, that the overture be remitted for further consideration to the Synodical Committee.

The Synod had transmitted to them for their Committee on Bills and Overtures, an overture signed by a number of members of the Church, praying the Synod to rescind the Independence Act. The overture was in the following terms :—"Whereas an Act was passed by the Synod in 1844, an Act declaring the Spiritual Independence of the Presbyterian Church of Canada in connection with the Church of Scotland, it is hereby overtured, that the Act be repealed by the Synod, and declared as no longer in force in any procedure of this Church. After long and earnest deliberation the Synod resolved, that whilst the Act of Spiritual Independence declares only what has all along been acknowledged by the Church of Scotland and maintained by this Church itself, yet, seeing that the terms of the Act have been abused, in leading on members from their allegiance to the Church, it is hereby resolved, that the Act shall no longer form any part of the Polity of the Church. This rescinding, however, of the Act shall not be held as an acknowledgement of any diminution of our spiritual independence, as from uncontrolled jurisdiction over all the presbyteries, kirk sessions, ministers, members, and adherents within our bounds.

The Synod ordered this enactment to be transmitted in terms of the Barrier Act, and in the meantime declared the same to be an Interim Act.

There was transmitted and read an overture anent the appointment of Trustees. After parties were heard the overture was referred to the Synodical Committee.

Mr. Dobie, the convener on Presbytery records, reported the Records of the Presbytery of Montreal, Glengarry and Hamilton, as carefully and correctly kept, and they were ordered to be attested accordingly.

It was agreed that the next annual meeting of Synod be held in London, on the first Tuesday in June.

Mr. Sym was appointed moderator of the Kirk-session of Paisley during his services there.

The Moderator then addressed the Synod, and after praise and prayer the Synod now closed with the apostolic benediction.

DAV. WATSON, Moderator.

ROBERT BURNET, Clerk of Synod.

True copy, GAVIN LANG.

RECORD.

In the
Superior
Court.

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

Acts and proceedings of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, begun at London, on the fifth day of June, in the year of our Lord one thousand eight hundred and seventy-seven.

SESSION LI.

Diet I.

At London, and there within St. Stephen's Church, the fifth day of June, eighteen hundred and seventy-seven years;

The which day the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, met according to appointment after sermon 10 by the Rev. David Watson, M.A., minister of Thorah, retiring moderator, from the text, Ecclesiastes xii. and 13th verse, "For God shall bring every work into judgment with every secret thing, whether it be good, whether it be evil," and was thereafter constituted with prayer.

The Presbytery rolls having all given in, the Synod roll was made up and read over.

Sederunt: David Watson, moderator; Robert Burnet, John Moffat, Robert Dobie, William Simpson, John Macdonald, Gavin Lang, Thos. Macpherson, Peter Watson, John Davidson, Neil Brodie, ministers; Thos. Miller, James Wright, Donald Cameron, Aaron Paterson, James Ritchie, George Brockie, John McMurchy, 20 Donald McKay, J. S. Hunter, Roderick McCrimmon, Allan Cameron, Finlay McQuaig, Duncan McArthur and James Clarke, elders.

The Moderator intimated, that after consultation with the ex-moderators it had been unanimously agreed to recommend the Rev. Gavin Lang, minister of St. Andrew's Church, Montreal, for the office of moderator for the current year.

On motion Mr. Lang was elected moderator and took his seat accordingly.

The thanks of the Synod were accorded to Mr. D. Watson for his excellent sermon, and for his whole conduct in the chair, and he was requested to allow of the publication of the discourse, to which he assented and made his acknowledgements. 30

Mr. Douglas Brymner and Mr. Thos. A. McLean, elders, and the Rev. Mr. Wallace, London, being present, were invited to sit and deliberate.

The following members were appointed by the Synod to form the Business Committee for 1877, viz.:—The Rev. the moderator, the ex-moderator, Mr. Burnet and Mr. Brymner.

The Synod proceeded to appoint the following committees, viz.:

I. To draft an Address to the Queen—Mr. Dobie, convener, Mr. Macpherson, Mr. Moffatt and Mr. Wright.

II. To draft an Address to the Governor-General—Mr. Davidson, convener, Mr. John McDonald and Mr. T. A. McLean. 40

The Synod proceeded to the election of three Trustees of Queen's College, at Kingston, in room of the retiring Trustees, Messrs. Brodie, Watson, (David), Macpherson and Davidson, who were unanimously re-elected.

It was unanimously agreed that during the present session the following be the hours of meeting, viz.: in the forenoon from ten till one o'clock, in the af-

True copy, GAVIN LANG.

noon from half-past two till half-past five, and in the evening from seven till the close of the diet. **RECORD.**

The following committee to consider all matters connected with the Temporalities Board fund was appointed to meet at 9 o'clock to-morrow morning, and to prepare a report for the next diet of the Synod, viz.: the Moderator, convener, Messrs. D. Watson, Dobie, Macdonald, Burnet, Macpherson, Davidson, Brymner, McLean, Donald Cameron, Wright and Clarke.

The Reverend Drs. Shand and Campbell being present, were invited to sit and deliberate.

- 10 The Presbytery of Glengarry was authorized to meet in the church to-morrow morning at half-past nine. Closed with prayer.

GAVIN LANG, Moderator.

ROBERT BURNET, Clerk of Synod.

Diet II.

At London, and within St. Stephen's Church, there Wednesday, the sixth day of June, one thousand eight hundred and seventy-seven years;

The which day the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, met pursuant to adjournment, and was constituted with prayer.

- 20 Devotional services were conducted by the Rev. John Davidson.

The minutes of yesterday's diet were read, amended and sustained.

The Synod proceeded to appoint the following committees:—

I. On Bills and Overtures:—The Rev. Neil Brodie, convener, Peter Watson, Roderick McCrimmon, George Brookie, Aaron Patterson and John McMurchy.

II. On References, Complaints and Appeals:—The Rev. the Moderator, convener, Mr. David Watson, Mr. Burnet, Mr. Macpherson, Mr. Dobie, Mr. McLean, Mr. Wright, Mr. Don. Cameron, Mr. McArthur.

III. To Revise Presbytery Records:—The Rev. John Macdonald, convener, Mr. Davidson, Mr. Moffat, Mr. Donald McKay, Mr. McQuaig, Mr. Ritchie.

- 30 IV. On Applications for leave to retire from the active duties of the Ministry:—The Rev. the Moderator, convener, Mr. Davidson, Mr. David Watson, Mr. John Macdonald, Mr. Burnet, and Mr. John Moffat.

V. Examining Committee for 1877-78:—The Rev. the Moderator, convener, the clerk, the ex-moderator, M. Davidson, Mr. Peter Watson, Mr. Brodie.

The Synod re-elected the Rev. Neil Brodie, the Rev. William Simpson, the Rev. Gavin Lang, the Rev. Thos. Macpherson, managers of the Ministers' Widows' and Orphans' Fund.

The Synod elected the Rev. Gavin Lang, the Rev. John Macdonald, governors of Morrin College.

- 40 The Rev. Henry McMeekin, being present, was invited to sit and deliberate.

Mr. Lang reported that several applications for aid had been received and forwarded to the Colonial Committee. That he had sent a letter to the Colonial Committee, and had been favoured with a satisfactory reply.

The committee was thanked for its labours and re-appointed; Mr. Lang to be continued in the office of convener.

True copy, GAVIN LANG.

*In the
Superior
Court.*

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

There was read an overture from the Presbytery of Glengarry, praying the Synod to appoint a Home Mission board, under such rules as may be agreed on, so that there may be united action in all our efforts in advancing the Redeemer's Kingdom within our bounds.

The overture was sustained, and the following committee was named to carry out the objects thereof, viz.: The Moderator, Mr. Macdonald, Mr. Macpherson, Mr. D. Watson, Mr. Burnet, Mr. Dobie, Mr. Moffat, Mr. Brodie, with power to add to their number.

Mr. James Mackie, Winterbourne, being present, was invited to sit and deliberate.

The Synod adjourned till to-morrow morning to allow the holding of a missionary meeting in the evening.

Closed with the apostolic benediction.

GAVIN LANG, Moderator.

ROBERT BURNET, Clerk of Synod.

Diet III.

At London, and there within St. Stephen's Church, Thursday, the seventh day of June, one thousand eight hundred and seventy-seven;

The which day the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland met, pursuant to adjournment, and was constituted 20 with prayer.

The minutes of the former diet were read and confirmed.

The Committee on Reference, Complaints and Appeals, transmitted to the Synod a report on the memorial of the Rev. Peter Watson, in reference to certain action of the Presbytery of Glengarry. The Committee's report recommended that the decision of the Synod in this case be, that the appeal of Mr. Peter Watson be sustained, which recommendation was adopted, and became the decision of the court, Mr. Brodie dissenting.

The Committee on Applications for leave to retire from the active duties of the Ministry, transmitted a report on the application of the Rev. Thos. Macpherson, minister of Lancaster, craving that his case be recommended to the favourable consideration of the Temporalities' Board. The Synod, on motion, agreed to appoint a commission, consisting of the Rev. Gavin Lang, the Rev. Robert Burnet, and Mr. J. S. Hunter, with instructions to proceed to Lancaster, and there take such steps as to them may seem best, with a view of securing a speedy arrangement of the difficulties existing in the congregation at Lancaster, and of effecting the early settlement of a minister in said congregation.

In order that the steps which may be taken by said commission may not fail to attain these ends, the Synod invest their commission with full Synodical powers to act in the premises, and ordain, if need be, that they carry the matter to a conclusion without further advice from the Synod.

The Rev. the moderator announced to the Synod that the late Benaiah Gibb had left the sum of \$2,000.00 in trust to himself on behalf of the Ministers'

True copy, GAVIN LANG.

Widows' and Orphans' Fund, and four hundred dollars to the Sabbath School of St. Andrew's Church, Montreal. RECORD.

There was transmitted and read an overture from the Committee of Bill and Overtures, praying for steps to be taken for securing an Act of Incorporation for the Church, which overture was adopted on the recommendation of the committee, and the carrying out thereof referred to the Committee on Legislation.

Another overture from the same committee, craving that the rules laid down in the polity of this Church in 1861 and 1873, anent the settlement of ministers, be rescinded, was carried unanimously.

10 It was overtured by the Presbytery of Montreal, through the proper committee, that the time of the summer meeting of the Presbytery be changed from the first Tuesday in August till the second Tuesday in September. The prayer was granted.

It was moved and seconded, that Mr. Burnet and Mr. T. A. McLean be appointed to visit Eldon for the purpose of advising with the congregation and otherwise acting as circumstances may direct.

The Home Mission Committee reported that it was expedient that the convener be in the East, and the vice-convener in the West; that the Board have a central Treasurer in each section of the Provinces, to whom all moneys be paid; 20 that a treasurer be appointed in each congregation by the congregation or Presbytery; that the ladies be requested to collect half-yearly in their bounds, and that every family be requested to contribute one dollar in the year towards the fund of said Board.

That a contribution of not more than 33 per cent be paid for each Sabbath day's service, in supplemented congregations. That the convener and vice convener visit all the charges when possible, once a year. That the *Landmark* publish the amounts and the names of the lady collectors who have collected for the Board.

That a portion of said funds be applied to the outward interests of the case, 30 such as Churches, *et cetera*, under certain conditions. That the expenses be allowed to the convener and vice-convener in said work. That missionaries be under the control of the Board, and they will try to procure such material aid as will sustain the Church. That the rules of the Home Mission Board, in Scotland, under the great leadership of Dr. Phair, be the rules governing the action of this Board.

The Rev. Neil Brodie was appointed convener, and the Rev. Robert Burnet vice-convener of the Home Mission Committee, the latter to act as secretary.

Mr. Robert M. Esdaile, was appointed general treasurer, Mr. Neil McLean, Cornwall, assistant treasurer for the Eastern, and Mr. James Wright, assistant 40 treasurer for the Western District.

The application for leave to retire from the active duties of the ministry of the Rev. Wm. Simpson, of Lachine, was allowed to lie on the table.

The Synod had transmitted to them a reference from their Committee on Bills and Overtures in regard to the status of those ministers, who did not attend the Victoria Skating Rink and enquiring how their names are to be removed from the roll.

True copy, GAVIN LANG.

*In the
Superior
Court.*

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

The Synod ordered that the example of the Synod in 1844 be followed, and that the Presbyteries remove the names off the roll according to the laws of the Church.

The Synod authorized the clerk to grant such certification to any members of Synod who purpose visiting Scotland during the present Synodical year, as would enable them to appear either before the Colonial Committee or General Assembly of the Church of Scotland or both.

An understanding was come to about the place of meeting for the next annual meeting of Synod.

The Synod enjoined on the Correspondence Committee to make special appli- 10
cation to the Colonial Committee for missionaries.

The thanks of the Synod were heartily tendered to the minister, kirk-session and people of St. Stephen's Church for their courtesy and kindness to the members of the Synod.

A special vote of thanks was also passed to Mr. J. Hickson, manager of the Grand Trunk Railway.

The Synod ordered that the collection for the Ministers' Widows' and Orphans' Fund be made on the first Sabbath in January next.

The Commission of Synod was appointed to meet on the call of the moderator after due notice. 20

The moderator then addressed the Synod, and with praise and prayer, the Synod was closed with the apostolic benediction, to convene in the city of Kingston on the second day of June, one thousand eight hundred and seventy-eight, at half-past seven o'clock in the evening.

GAVIN LANG, Moderator.

ROBERT BURNET, Clerk of Synod.

Acts and Proceedings of the Presbyterian Church of Canada in connection with the Church of Scotland, begun at Kingston, the eleventh day of June, one thousand eight hundred and seventy-eight years.

SESSION LII.

Diet I.

30

At Kingston, Tuesday, the eleventh day of June, one thousand eight hundred and seventy-eight years :

The which day the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, met according to appointment, after sermon by the Rev. Gavin Lang, retiring moderator, from the text, Exodus xiv chapter and 15th verse, "Go ye forward," and was constituted with prayer.

Presbytery rolls having been given in, the Synod roll was made up and read over.

Sederunt : Mr. Gavin Lang, moderator ; Mr. Peter Watson, Mr. John Davidson, Mr. Neil Brodie, Mr. David Watson, Mr. Robert Dobie, Mr. Robert Burnet, 40
Mr. John Moffat, Mr. Wm. Simpson, Mr. John Macdonald, ministers ; Mr. Wm. Cameron, Mr. Duncan McArthur, Mr. Roderick McLeod, Mr. Malcolm Leslie, Mr. Murdoch McQuaig, Mr. James Clarke, Mr. William Ritchie, Judge Miller, Mr. John McKenzie, Mr. Donald Cameron, Mr. Geo. Brockie, Mr. Aaron Patterson, Mr.

True copy, GAVIN LANG.

Angus McMurchy, Mr. John McMurchy, Mr. John Anderson, Mr. Donald McKay, and Mr. J. S. Hunter, elders. **RECORD.**

Intimation having been made that during the past year the Almighty had seen fit in His goodness to remove several of the elders by death, the moderator named the Rev. Gavin Lang, the Rev. John Macdonald and the clerk, to prepare obituary notices of the deceased.

The Rev. the moderator intimated that after consultation the ex-moderators had agreed unanimously to nominate for the current year the Rev. John Davidson, minister at North Williamsburg, as moderator, which nomination was accepted on resolution moved and seconded. The moderator being present took the chair.

It was proposed and agreed to, that the thanks of the Synod be given to Mr. Lang, the retiring moderator, for the appropriate discourse preached by him this evening, and for his whole conduct in the chair and that he allow of the publication of the sermon, which thanks the moderator tendered to Mr. Lang.

There was read the copy of a despatch from the Secretary of His Excellency the Governor-General, dated Government House, Ottawa, 18th October, 1877, intimating the receipt of two addresses, one to Her Majesty the Queen, and the other to His Excellency the Governor-General, and the high appreciation he had of the loyal devotion to the British Government and Constitution of the members of this Synod.

The Business Committee of 1877 were, on motion re-appointed for 1878, viz.: the Reverend the moderator, the ex-moderator, and Messrs. Burnet and Brymner.

Dr. A. J. Campbell, licentiate, being present, was invited to sit and deliberate.

The Synod re-elected the Rev. Robert Dobie and the Rev. Robert Burnet, two Trustees of Queen's College, who retire pursuant to the terms of the Royal Charter.

Committees were appointed:

I. To draft an Address to the Queen—to consist of Mr. Lang, Mr. Dobie, Mr. Macdonald, Mr. John McMurchy and Mr. John McKenzie.

II. To draft an Address to the Governor-General to consist of Mr. Brodie, Mr. David Watson, Mr. Andrew Clarke and Mr. Burnet.

It was agreed that during the present session the following be the hours of meeting, viz.: in the forenoon from half-past nine till one o'clock; in the afternoon from half-past two till half-past five; and in the evening from seven till the close of the diet.

The Presbytery of Glengarry was authorised to meet in the church tomorrow morning at nine o'clock.

Closed with prayer.

JOHN DAVIDSON, Moderator.

ROBERT BURNET, Clerk.

At Kingston, Wednesday the twelfth day of June, one thousand eight hundred and seventy-eight years:

The which day, the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, met pursuant to adjournment and was constituted with prayer.

True copy, GAVIN LANG.

*In the
Superior
Court.*

No. 58.

(Petitioner's
Exhibit Z1)

Acts and

Proceedings

of the Synod

of the Pres-

byterian

Church of

Canada in

connection

with the

Church of

Scotland on

and since

June 15,

1875, filed

1st August

1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

Devotional services were conducted by Rev. Peter Watson, of Williamstown. The minutes of yesterday's diet were read and sustained.

The Synod appointed the following committees, viz ;

I. On Bills and Overtures—The moderator, convener, the clerk, Mr. Lang, Mr. Dobie, Mr. Brymner, Mr. Angus McMurchy, Mr. John McKenzie, Mr. Brockie and Mr. Westley.

II. On References, Complaints and Appeals—the moderator, convener, ex-moderator, the clerk, David Watson, Dobie, McQuaig, Don. Cameron, Douglas Brymner, John McMurchy, Allan Cameron.

III. To revise Synod and Commission Records—Mr. Dobie, convener, 10 Brodie, Lang, Brymner, Peter Watson, McLeod, Leslie.

IV. To revise Presbytery Records, Mr. John Macdonald, convener, Mr. David Watson, Mr. Peter Watson, Neil Brodie, James Clarke, Don. Cameron, Allan Cameron, John McKenzie, and Geo. Brockie.

V. On Applications for leave to retire from the active duties of the Ministry—Mr. Lang, convener, Mr. David Watson, Mr. Peter Watson, Mr. John McKenzie, Mr. Angus McMurchy, Mr. Charles Westley.

VI. Application for Admission—The moderator, convener, ex-moderator, Mr. Macdonald, Mr. Brymner, Mr. John McMurchy.

VII. Examining Committee for 1878-9, the Clerk, convener, the moderator, 20 ex-moderator, Mr. Peter Watson, Mr. David Watson, Mr. Neil Brodie, and Mr. Dobie.

The Synod re-elected the retiring managers of the Ministers' Widows' and Orphans' Fund, viz : Rev. John Davidson, Rev. Thos. Macpherson, Mr. Alexander McGibbon and Mr. James Wright.

The name of the Revd. Henry McMeekin having been omitted from the roll of the Presbytery of Glengarry, the matter was on his application referred to the following committee, viz : The moderator, ex-moderator, Messrs. Burnet, Dobie, Brockie, Don. Cameron, that the Presbytery of Glengarry be enjoined to meet with the committee now, who shall report to the Synod forthwith. 30

The committee having met, considered the question, and having had read the minutes of the Presbytery of Glengarry relating to the matter, agreed to report the following finding to the Synod, "that the committee adjourn till tomorrow morning at half-past nine o'clock, to come to a final decision on the question of privilege raised by the Revd. Henry McMeekin, but that in view of the evidence of looseness and irregularity of the acts and proceedings of the Presbytery of Glengarry, recommend that pending such final decision, the Synod be recommended to put Mr. McMeekin's name on the roll, that he may not meanwhile even seem to suffer in his rights and privileges."

The report of the committee having been read, it was moved by Mr. Burnet 40 and seconded by Mr. Macdonald, that the report be sustained.

In amendment it was moved by Mr. Brodie, and seconded by Mr. Malcolm Leslie, that the report be sustained, except the placing of Mr. McMeekin's name on the roll until the matter is decided.

The motion carried by a vote of eight to six. Whereupon Mr. Brodie and those adhering to his views dissented from the decision for the following reasons,

True copy, GAVIN LANG.

viz; First, inasmuch as no evidence was looked at, or read before any action taken. Second, as the matter involves the legal and equitable rights of others, was *ultra vires* of this court at this time. Third, inasmuch as it is a seeming violation of one commandment, and especially, as laid down authoritatively by the great Lord, Matthew V. chapter, 27th and 28th verses, and for other reasons.

There was read a communication from the Revd. Howard D. Steele, of the Presbyterian Church in Canada, for re-admission into the Church. The application was referred to the proper committee.

A petition from the congregation at Milton was presented, craving permission to sell a certain parcel of land at Milton, the proceeds to be devoted for the benefit of the Church there. The documents in the case were ordered to be transmitted for examination by the Committee on Property.

The records of the Presbyteries of Hamilton and Montreal were laid on the table and referred to the committee.

Returns to the Remit on the Interim Act regarding Spiritual Independence Act of 1844 were called for. No dissent being intimated, the Act was declared a standing Act of the Church.

It was moved by Mr. Burnet, seconded by Mr. Lang, and agreed to, that the following committee be appointed to consider and report to a future diet of this Synod upon the present position of the Temporalities Fund, and the actions raised to recover that fund to the entire control of this Church; also as to the best way of evoking the practical and pecuniary sympathy of the various congregations of the Church, with the view to the immediate formation of a Fund which will secure that the way is clear to the last Court of Appeal, in not only the action instituted by the Rev. Robert Dobie, against the Board for the management of the Temporalities Fund, but also all other actions to recover or defend the property of this Church, which are approved by the Synod or any of the Presbyteries, or such committees as may be appointed by this Synod; the moderator, ex-moderator, Robert Dobie, John Macdonald, David Watson, Douglas Brymner, with power to add to their number.

The Presbytery of Hamilton was authorised to meet in the Church tomorrow morning at nine o'clock.

A meeting of the Correspondence Committee was called for nine thirty tomorrow morning.

Closed with prayer.

JOHN DAVIDSON, Moderator.

ROBERT BURNET, Clerk of Synod.

Diet III.

At Kingston, Thursday, the thirteenth day of June, one thousand eight hundred and seventy-eight;

The which day the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland met, pursuant to adjournment, and was constituted with prayer.

Devotional services were conducted by Rev. Dr. Campbell.

The minutes of yesterday's diet were read and sustained.

On motion made and seconded, the Rev. Howard D. Steele was invited to sit and deliberate.

RECORD.

In the
Superior
Court.

No. 58.
(Petitioner's
Exhibit Z1)
Acts and

Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

True copy, GAVIN LANG.

RECORD.

*In the
Superior
Court.*

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.
—continued.

Mr. Lang, the convener of the committee, on the question of privilege raised by the Rev. H. McMeekin, gave in a report, said report is as follows:—The committee beg leave to report to the Synod that this committee recommend to the Synod to accept the resignation hereby tendered by the Rev. H. McMeekin of his charge at Lancaster, and with regard to the question of stipend due to him affectionately urge upon the congregation the duty and desirability of satisfying in a just and equitable way, the obligation under which they came to him at his induction, and further enjoin the Presbytery of Glengarry to take earnest cognizance of this matter, and in every possible way help the congregation of Lancaster to carry out the settlement indicated in this resolution, and as Mr. McMeekin has, along with his resignation, asked a certificate of standing as a minister of this Church, with a view to go to the United States, this committee recommend the Synod to instruct its clerk to furnish such certificate in the usual way.

The Synod unanimously agreed to decern in terms of the report.

An understanding was come to as to the time and place of the next annual meeting of Synod.

By resolution duly moved, seconded and unanimously agreed to, the Synod instructed the clerk to prepare and transmit a resolution conveying the thanks of the Synod to the officiating minister, steward and congregation of the Primitive Methodist Church, for their kindness in granting the use of the church for 20 the meeting of Synod, and that special thanks were due to Mr. Henry Bennett, steward, for his courtesy and attention.

The application of the Rev. Wm. Simpson and Rev. Thos. Macpherson, for leave to retire from the active discharge of the duties of the ministry, were ordered to lie on the table.

An overture was transmitted from the Committee on Bills and Overtures, praying for the junction of the Presbytery of Montreal and Glengarry; the request was granted, and the first meeting of the new Presbytery, thus constituted, was appointed to be held in the church at Lancaster, on the first Wednesday of August, 1878, the Rev. John Davidson to be moderator. 30

Mr. Brodie laid before the Synod the report of the Home Mission Committee, which, after discussion, was adopted.

Mr. John McMurchy brought to the notice of the Synod the fact that Dr. Campbell had begun to publish a record in the interests of the Church, and asking for it the recognition of the Synod. After hearing the views of the members, the Synod resolved, in compliance with the views of Mr. McMurchy and of the members generally, to recommend the paper to the support and countenance of the congregations as calculated to be of service in diffusing useful information.

An application for admission to the ministry of the Church, from the Rev. Howard D. Steele, which had been referred to the Committee on Applications, 40 was reported upon, the report recommending that the Synod should authorize any of the Presbyteries, to which Mr. Steele might apply, to admit him as an ordained missionary on the production of the usual certificates. The report was adopted.

The Rev. Gavin Lang moved the following resolution, which was seconded by the Rev. Mr. Burnet and adopted, "The attention of the Synod having been

True copy, GAVIN LANG.

called to the movement now going on to raise an additional endowment of \$150,000 for Queen's College; it is hereby resolved, that an expression of sympathy be recorded, but that to preserve the consistency of this Church, it be remitted to the committee appointed in the matter of the Temporalities' Fund, and the actions instituted to recover that fund to the Church, to (in such a way as they deem best) make it known in the proper quarters that the Synod cannot regard Queen's College as the property of any other Church than the Presbyterian Church of Canada in connection with the Church of Scotland, and that in due course it is the Synod's intention to claim the entire control of that institution with all its rights and privileges, as secured by royal charter." The resolution was unanimously adopted, the members generally expressing the earnest determination to proceed deliberately, but firmly, to take steps to regain the various parts of the machinery for carrying on the Church's operations.

Mr. Lang, convener of the Correspondence Committee, presented the report of their correspondence with the Colonial Committee and of the disposal of the grant for missionary purposes from the Church of Scotland. After mature deliberation the report was adopted, Mr. Brodie dissenting.

It was resolved to consider, in committee of the whole, the question as to the best means for evoking the particular sympathy and pecuniary assistance of the congregations of the Church in her proper work.

A long and earnest expression of the views of the members took place and much valuable information was given.

The committee rose and reported to the Synod, and the report as follows was agreed to:

I. That Mr. Douglas Brymner be requested to draft a form for the guidance of ministers, missionaries and elders, to be appointed by the Synod to solicit subscriptions, said form to set forth the importance of the Temporalities' Board suit, to be submitted to and signed by the moderator, and to be circulated among the congregations of the Church.

II. The Rev. Gavin Lang be appointed treasurer for the purposes of the scheme.

III. That the following members compose the committee: Messrs. Lang, Brodie, Davidson, Burnet, Brymner, Brockie, Donald Cameron, Westley, John McMurchy, Nicoll, Ritchie, Dougald McMurchy, Hunter, Angus McMurchy, junior, Angus McEachern, John McKenzie, and James Corbett, with power to add to their number.

Drafts of addresses to Her Majesty the Queen and to His Excellency the Governor-General, were submitted by the committee, read, adopted and ordered to be transmitted by the clerk.

It was unanimously agreed that a vote of thanks be accorded to Mr. Hickson, manager of the Grand Trunk Railway, for the courtesy extended to members of Synod.

The clerk was instructed to make official representation to the Grand Trunk Railway officials and to those of the Great Western Railway of the desire of the Synod, that the half fare system should, if consistent with their regulations, be restored.

True copy, GAVIN LANG.

RECORD.

In the
Superior
Court.

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

RECORD.

—
In the
Superior
Court.
—

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

It was unanimously agreed that the moderator be authorized, in the name of the Synod, to sign a petition to the Legislature of the Dominion for an Act of Incorporation for the Church.

The Presbytery of Hamilton was allowed to meet on the 3rd July, at Collingwood, at eleven o'clock a.m., intimation of which was made.

The Presbytery of Montreal was allowed to meet in Kingston, after the benediction, for all competent business. Intimation was made accordingly.

The moderator closed the proceedings by delivering a suitable and an eloquent address. After praise and prayer, he said: In the name of the Lord Jesus Christ, the King, and only Head of this Church and of nations, I resolve this meeting and appoint the next annual meeting of Synod to convene in the city of Toronto, on the second Tuesday of June, eighteen hundred and seventy-nine, at 7.30 in the evening.

Of which public intimation was made, and the moderator pronounced the benediction.

JOHN DAVIDSON, Moderator.

ROBERT BURNET, Clerk of Synod.

Acts and Proceedings of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, begun at Toronto, the tenth day of June, one thousand eight hundred and seventy-nine years.

SESSION LIII.

20

Diet I.

At Toronto, Tuesday, the tenth day of June, one thousand eight hundred and seventy-nine years;

The which day the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland met, according to appointment, after sermon by the Rev. John Davidson, retiring moderator, from the text Ecclesiastes VII chapter and 14th verse, and was constituted with prayer. Rev. Gavin Lang was appointed clerk *pro tem*.

Presbytery rolls having been given in, the Synod roll was made up and read over.

Sederunt:—Mr. John Davidson, moderator, Mr. John Macdonald, Mr. David Watson, Mr. Robert Dobie, Mr. Peter Watson, Mr. Neil Brodie, Mr. John Moffat, Mr. Gavin Lang, and Mr. A. J. Campbell, M.D., ministers; Mr. John McKenzie, Mr. Donald Cameron, Mr. John McMurchy, Mr. Archibald McCallum, Mr. Angus McMurchy, Mr. George Brookie, Mr. T. A. McLean, Mr. James Clarke, Mr. George Sangster, Mr. William Bain, Mr. John McEachern, Mr. Archibald McCallum, elders.

The Reverend the moderator nominated as moderator for the current year the Revd. John Macdonald, Beechridge, which nomination was accepted on resolution moved and seconded.

The moderator elect took the chair.

On motion by Mr. Dobie, the thanks of the Synod were conveyed to the retiring moderator for his conduct in the chair, and his appropriate discourse delivered that evening, and a request made that the said discourse be published in the Record, to which request Mr. Davidson acceded.

True copy, GAVIN LANG.

On motion, it was agreed to record a warm expression of sympathy with the Rev. Robert Burnet, under his present severe indisposition, which has prevented his attendance at the Synod at this time, and taking part in its business and deliberations.

The Rev. Peter Galbraith, of Hopewell, Nova Scotia, and Mr. Douglas Brymner, Ottawa, being present, were asked to sit in the Synod and deliberate with the brethren.

The moderator, ex-moderator, and Messrs. Dobie, Lang and Brymner, were appointed a Business Committee for the present session.

10 The Synod re-elected Mr. John Moffat and Mr. Peter Watson, who retire pursuant to terms of the Royal Charter, as trustees of Queen's College.

The following Committees were appointed :

I. To draft an Address to the Queen, to consist of Mr. Dobie, Mr. John Mc-Murphy, and Mr. John McKenzie.

II. To draft an Address to the Governor-General, to consist of Mr. Brodie, Mr. David Watson, Mr. Clarke, and Mr. Sangster.

It was moved by the Rev. Dr. Campbell, seconded by the Rev. John Moffat, that a public meeting be held on Tuesday evening to explain matters connected with our Church, and that the following be appointed to explain the said matters :

20 Messrs. Lang, Brodie, Galbraith, of Hopewell N. S., McLean and Brymner. The consideration of this motion was delayed until to-morrow morning.

It was agreed, that during the present session the following be the hours of meeting, viz. ; in the morning, from half-past nine till one o'clock ; in the afternoon, from half-past two till half-past five ; and in the evening, from seven till the close of the diet.

The Presbytery of Hamilton and the Presbytery of Montreal and Glengarry were authorized to meet in this Church to-morrow morning at nine o'clock.

Mr. Lang reported that the address of welcome appointed to be presented to the Marquis of Lorne on arrival in Canada was presented to His Excellency at 30 Montreal, to which he returned a most gracious reply, which was ordered to be held *in retentis*. It was also mentioned that His Excellency had been pleased to receive the address of this Church first of all the ecclesiastical addresses presented in the upper part of the Dominion.

Mr. Lang also reported that in accordance with the Synod's instructions he had served upon the Hon. John Hamilton, acting chairman of the Board of Trustees of Queen's College, the resolution agreed to regarding the movement to raise additional endowment for that institution and embodying an assertion of this Church's right, under the Royal Charter, to its possession and privileges.

Closed with prayer.

40 JOHN MACDONALD, Moderator.

GAVIN LANG, Clerk *pro tempore*.

Diet II.

At Toronto, Wednesday, the eleventh day of June, one thousand eight hundred and seventy-nine ;

The which day the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland met, pursuant to adjournment, and was constituted by prayer.

True copy, GAVIN LANG.

RECORD.

In the
Superior
Court.

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

RECORD.

*In the
Superior
Court.*

No. 58.

(Petitioner's
Exhibit Z1)

Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

--continued.

Devotional services were conducted by the Rev. Peter Galbraith, of Hope-
well, Nova Scotia.

The minutes of yesterday's diet were read and sustained.

Consideration of the motion, tabled by Rev. Dr. Campbell at yesterday's
diet, relative to the expediency of holding a public meeting on Thursday evening
first, was resumed, and after discussion it was carried, and Messrs. McLean and
Brymnner were appointed to make the necessary arrangements.

The Synod appointed committees.

I.—On Bills and Overtures. II.—On References, Complaints and Appeals.

III.—To Revise Synod Records. IV.—To Revise Presbytery Records. V.—On 10
Applications for Leave to Retire from the Active Duties of the Ministry. VI.—
On Application for Admission. VII.—On the Examining Committee for 1879-
80, and it was agreed that these committees should consist of the same members
as at the session of last year, with the exception of those elders who are not
members of the Synod this year, in which case their successors shall take their
places.

The Committee upon the Temporalities Fund suit and its present position
reported progress. Mr. Brymnner explained the stage at which that suit had
arrived, and that now by injunction, obtained and confirmed by Mr. Justice
Jetté, the fund was tied up, and the prospects of very soon reaching the 20
merits of the action very satisfactory. Mr. Lang gave in detail the results
of the efforts made by visitation and circular; to raise congregational contri-
butions for the Defence Fund to meet the expenses incurred in carrying on the
Temporalities Fund suit. A sum of \$835.06 had been received, and \$953.41
had been expended, of which \$772.11 had gone for law costs, \$75.30 for
necessary travelling expenses, \$89.50 for printing circulars to congregations
and petition to be presented to Court, and \$16.50 for incidental charges.

On motion by Mr. J. A. McLean, seconded by Mr. David Watson, it was
resolved that the report of the committee be received and adopted, and
further, that the thanks of the Synod be given to the committee, and espe- 30
cially to the convener, for their diligence and the gratifying progress they
have made, as also to the congregations for such measure of liberality as that
with which they have responded to the call made upon them, and that the
committee be re-appointed with powers and instructions to prosecute their in-
teresting work.

Mr. David Watson, seconded by Mr. Brymnner, moved, and it was unani-
mously agreed to, "that inasmuch as it has been reported to the Synod that
a feeling prevails in many quarters that the continued existence of the Church
depends upon the recovery of the property now sought to be recovered, it is
resolved to anew declare, as it now solemnly declares, that it is the determination 40
of this Synod to maintain the connection with the Church of Scotland."

It was agreed to adjourn till to-morrow morning at ten o'clock.

Closed with prayer.

JOHN MACDONALD, Moderator.

GAVIN LANG, Clerk *pro tempore*.

True copy, GAVIN LANG.

Diet. III.

At Toronto, Thursday, the twelfth day of June, one thousand eight hundred and seventy-nine;

The which day the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland met, pursuant to adjournment, and was constituted with prayer.

Devotional services were conducted by the Rev. H. D. Steele, Paisley.

The minutes of yesterday's diet were read and sustained.

- 10 The Revd. James Paterson from Scotland, and the Rev. Dr. Baird from the United States, were asked to sit and deliberate.

Application was made for power to mortgage the Church property of St. Andrew's Church, North Williamsburg, and on motion by Mr. Lang, seconded by Mr. Dobie, it was resolved "that the trustees of St. Andrew's Church, North Williamsburg, be and are hereby authorised to mortgage the property of said Church for the purpose of meeting certain liabilities, not to exceed one thousand dollars."

- Another application was made for power to mortgage or sell the Church property at Cote St. George, and on motion by Mr. David Watson, and seconded by 20 Mr. John McKenzie, it was resolved, "that the trustees of the congregation of the Presbyterian Church of Canada in connection with the Church of Scotland, at Cote St. George in the parish of St. Polycarpe, be and are hereby authorized to mortgage the property of said congregation for the purpose of meeting certain liabilities, not to exceed eight hundred dollars, or at the discretion of said trustees to sell said property in accordance with application of said congregation and trustees, dated twenty-fourth day of February, eighteen hundred and seventy-nine."

- Mr. Lang gave in the report of the Correspondence Committee, read letters both to and from the Colonial Committee of the Church of Scotland, and the General 30 Assembly of the Parent Church, and announced. I.—That a grant of three hundred pounds sterling had been received from the Colonial Committee for *Maze Mission* work, within the bounds of this Synod; and II.—That a telegram had been received from the Rev. R. H. Muir, convener of said Colonial Committee, to the effect that "Mr. Sprott, deputy, leaves by Allan line on fifth for Montreal." The thanks of the Synod were unanimously given to the Committee on Correspondence and its convener, and after discussion, it was agreed "that the sum granted to this Church by the Colonial Committee, be divided in the proportion of one-third to the Presbytery of Montreal and Glengarry, and two-thirds to the Presbytery of Hamilton, said amounts to be expended, in accordance with the 40 directions of the said Presbyteries, by the Correspondence Committee of this Synod, who are the custodians of the fund."

The Synod re-elected Messrs. Donald McKay, Robert James Reekie, George Denholm, and David Law, who retire at this time from the Board of the Ministers' Widows' and Orphans' Fund, the members of that Board.

The hearty thanks of this Synod were unanimously passed to Mr. Hickson, of the Grand Trunk Railway, and to Mr. John Ross Robertson, of the Toronto

True copy, GAVIN LANG.

*In the
Superior
Court.*

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

RECORD. *Telegram*, for the courtesy and services extended to it for its present sessions' meetings.

*In the
Superior
Court.*

No. 58.
(Petitioner's
Exhibit Z1)
Acts and
Proceedings
of the Synod
of the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland on
and since
June 15,
1875, filed
1st August
1879.

—continued.

The thanks of the Synod were also passed to Mr. T. A. McLean for his kindness and exertions in promoting the arrangements for the present meeting and its comfort during its sittings.

The moderator closed the proceedings by delivering a suitable address. Thereafter the minutes of this present diet were read and sustained, and after praise and prayer the moderator said: In the name of the Lord Jesus Christ, the King and Head of this Church and of nations, I dissolve this meeting, and appoint the next annual meeting of Synod to convene at Thorah, on the second Tuesday of 10 June, one thousand eight hundred and eighty, at seven o'clock in the evening.

Of which public intimation was made, and the moderator pronounced the benediction.

JOHN MACDONALD, Moderator.

GAVIN LANG, Clerk, *pro tempore*.

True copy, GAVIN LANG, Clerk *pro tempore*.

(Endorsed.)

Petitioner's Exhibit Z1, filed at enquête, in connection with the deposition of the Rev. Gavin Lang—Filed 1st August, 1879.

(Paraphed) G. H. K., Depy. P.S.C.

No. 59.
(Petitioner's
Exhibit Z2)
Letter to
the Rev.
Gavin Lang,
from the
Rev. R. H.
Muir, on be-
half of the
Colonial
Committee
of the
Church of
Scotland
recognizing
the Pres-
byterian
Church of
Canada in
connection
with the
Church of
Scotland,
dated 3rd
June, filed
2nd July
1879.

Schedule No. 74.

20

G. A. Colonial Mission,
22 Queen Street, Edinburgh,
3 June, 1879.

To the
Rev. Gavin Lang,
Convener of the Correspondence Committee
of the Presbyterian Church of Canada in
connection with the Church of Scotland.

Reverend and Dear Sir:

I have the pleasure of addressing you on behalf of the Colonial Committee, under instructions of the General Assembly of the Church of Scotland, to inform you that the Reverend George W. Sprott has been deputed by the Assembly to 30 convey their cordial greetings to the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland; and hoping that you may be able to arrange with Mr. Sprott for his having the opportunity, most convenient for the Synod, of discharging the duty which the General Assembly has entrusted to him.

I am, Reverend and Dear Sir,

Yours truly,

ROBERT H. MUIR, Convener of Col. Committee.

(Endorsed.)

Petitioner's Exhibit Z2.—Filed at enquête July 2, 1879.

(Paraphed) J. B. V., Dep. P.S.C.

40

Filed 1st August, 1879.

(Paraphed) G. H. K., Depy. P.S.C.

40 le
su
C

Schedule No. 75.

Montreal, June 16.

RECORD.

My Dear Lang :

I am very sorry to have missed you here, as my instructions are to communicate with you as to the best time and place for a conference with the ministers of the Presbyterian Ch. of Canada in connection with the Church of Scotland. This is the first article in my programme. They did not know on the other side the date of the meeting of your Synod, but understood that it was likely to be over before I should arrive out. I am going to Ottawa to-day, and I propose then going as far west as London. If all is well I shall be in Montreal again in a little over a fortnight. Would you kindly write me about this conference, and also tell me about any of your congregations west that it would be advantageous for me to see. The committee are anxious that I shall get all the information possible as to the state of matters over here, and it is only in this way that my visit is likely to be of any use.

Please write to Ottawa on receipt of this, as I shall not leave before Thursday or Friday, if so soon.

I was delighted to see Mrs. Lang yesterday and your children, and I hope to have a very pleasant meeting with you in Montreal on my return. I asked 20 my home letters to be sent to you, so please forward them.

I enclose a communication from Mr. Muir.

Ever yours sincerely,

GEORGE W. SPROTT.

P.S.—I should like a list of your congregations, West, that are assisted by this committee's grant. Mr. Muir desired me particularly to say how sorry he was about its not being intimated to you at the right time.

(Endorsed.)

Petitioner's Exhibit Z3.—Filed at enquête July 2, 1879.

(Paraphed) J. B. V., Dep. P.S.C.

30 Filed 1st August, 1879.

(Paraphed) G. H. K., Depy. P.S.C.

Schedule No. 77.

No. 61.
(Petitioner's
Exhibit Z5)
Extracts
from the
Acts and
Proceedings
of the
General
Assembly of
the Church
of Scotland,
filed 1st
Aug. 1879.

Extract from the Proceedings of the Gen. Ass. of the Ch. of Scotland, 1875, pp. 83.

The committee reported in the case of the Rev. Thomas Gillespie Smith, at present minister of St. Andrew's Church, Kingston, Ontario, Canada, craving to be recognized as eligible to a charge in Scotland, and as a minister of the Church of Scotland: "That Mr. Smith received his education in arts in one session's attendance at the University of St. Andrew's, and three sessions at Queen's College, Canada, and other two sessions at Wabash College, Indiana, U.S.; that subsequently he prosecuted his studies in Divinity at the Theological Seminary, Cincinnati, Ohio, U. S., where he attended two sessions; and at the Theological

Certified to be a true copy, J. H. MACKERRAS.

RECORD. Seminary, Dunville, Kentucky, U. S., where he attended one session; that he was licensed by the Presbytery of Crawfordsville, Indiana, U. S., and ordained by the Presbytery of Cincinnati, Ohio, U. S.; that he was minister of St. Andrew's Church, Melbourne, in the Presbytery of Quebec in connection with the Church of Scotland, from July 1862, till January 1867; that he was called hence to the Pastorate of the first Presbyterian Church in Fond du Lac, Wisconsin, where he continued till unanimously called in April 1874 to the important congregation of which he is now minister."

No. 61.
(Petitioner's
Exhibit Z5)
Extracts
from the
Acts and
Proceedings
of the
General
Assembly of
the Church
of Scotland,
filed 1st
Aug. 1879.
--continued.

Further they report—"That the petition is unsupported by any documentary evidence; but that Mr. Smith refers to the deputation from the Synod of Canada to this General Assembly for any further information regarding him. and several members of Committee have received from members of the deputation and others the very highest testimonies in his favour." In the circumstances, the committee unanimously agreed to recommend his application to the General Assembly

It was moved and agreed to—"That the Assembly approve of the recommendation of the committee, and authorize and enact in terms thereof. (See Act No. XVII.)

The committee reported in the case of the Rev. Robert Laing, Bachelor in Arts, and minister of the Presbyterian Church of Canada, praying to be recognized as an ordinary minister of the Church of Scotland—"that the petition is supported by extract from the Presbytery of Montreal, testifying to his having passed the usual course of Literature and Philosophy, and thereafter the usual course of Divinity, required by the Acts of the Presbyterian Church of Canada in connection with the Church of Scotland, and that his proficiency and conduct as a student were satisfactory, and that after due probationary trials he was licensed to preach the Gospel; also by certificate from Rev. Dr. Jenkins in Mr. Laing's favor; also by certificate of Mr. Laing's attendance as a student on the Theological course in Morrin College, Quebec, and of his attendance at the Hebrew class in Edinburgh, session 1868-69; also by Presbyterial certificate from the Presbytery of Montreal, of date 22 June 1872."

The committee recommend that the petition be granted.

It was moved and agreed to—"That the Assembly approve of the recommendation of the report, and authorise and enact in terms thereof." (See Act No. XVIII.)

Certified to be a true copy, J. H. MACKERRAS.

Extract from the proceedings of the General Assembly of the Church of Scotland, 1875, pp. 49.

It was also agreed: That the application of the Rev. Robert Laing, B.A., Montreal, for admission to the Church of Scotland be remitted to the Committee on the Admission of Dissenting Ministers to the Church.

Extract from the Proceedings of the Gen. Ass. of the Ch. of Scotland, 1875, pp. 81.

The committee reported in the case of Mr. Thomas Macfarlane Campbell, licentiate of the Free Church, craving to be admitted as a probationer of the

Certified to be a true copy, J. H. MACKERRAS.

Church of Scotland: "That the application is accompanied with certificate of full college attendance and study at the Glasgow University, and Free Church Divinity College, Glasgow; that all the documents required by the Act of Assembly were found satisfactory and that they have been forwarded with the cordial recommendation of the Presbytery of Paisley." The committee recommend that the application be granted.

It was moved and agreed to: "That the General Assembly approve of the report, grant Mr. Campbell's application and enact in terms thereof." (See Act No. XIX.)

10 The committee reported in the petition of Mr. Stuart Brown, licentiate of the Free Church, to be admitted as a probationer of the Church of Scotland: "That Mr. Brown has attended a full course of literature and philosophy during four sessions of the University of Edinburgh, that he has attended all the theological classes of the Free Church during four sessions, that he has also been enrolled, and has given attendance at the Divinity Hall, Edinburgh University, in classes of Divinity for one session; that his other certificates of character are satisfactory and that his application is forwarded with the unanimous recommendation of the Presbytery of Kirkcaldy." The committee recommend that the petition be granted.

20 It was moved and agreed to: "That the General Assembly approve of the report, grant Mr. Brown's petition, and enact in terms thereof." (See Act No. XX.)

Certified to be a true copy, J. H. MACKERRAS.

(Page First.)

Extract from Proceedings of the General Assembly of the Church of Scotland, 1872, pp. 47:

"The Rev. Dr. Jenkins of St. Paul's, Montreal, was then introduced by Dr. Robertson, and laid on the table of the Assembly an extract of the deliverance of the Synod of Canada, appointing him their representative to this General
30 "Assembly. Dr. Jenkins, with their permission, then addressed the Assembly.
"It was moved, seconded, and agreed to, that the General Assembly desire
"to record the high satisfaction with which they have heard of the energy,

Certified to be a true copy, J. H. MACKERRAS.

(Page second)

"Christian zeal and distinguished success with which their work, as a church, is
"carried on by the Synod, of which Dr. Jenkins is the representative; and in
"bidding them God-speed in the great work before them in a great country, daily
"advancing in wealth and population, they feel assured that that work will be
"carried on, by God's help, for the future as it has been in the past, and that
40 "no union of the several Presbyterian bodies in Canada will be agreed to
"without their being all fully satisfied that the great object of extending the
"benefits of religion will, by that union, be even more vigorously and effectively

Certified to be a true copy, J. H. MACKERRAS.

RECORD.

In the
Superior
Court.

No. 61.

(Petitioner's
Exhibit Z5)
Extracts
from the
Acts and
Proceedings
of the
General
Assembly of
the Church
of Scotland,
filed 1st
Aug. 1879.
—continued.

RECORD.

(Page third)

—
In the
Superior
Court.
—

No. 61.
(Petitioner's
Exhibit Z5)
Extracts
from the
Acts and
Proceedings
of the
General
Assembly of
the Church
of Scotland,
filed 1st
Aug. 1879.
—continued.

"carried out than now. They rejoice in the assurance that has been given them
"of the loyalty and attachment of Canada to the throne and Empire of Great
"Britain, and they express their fervent trust that the tie that binds together
"the Empire and her greatest dependency, may in the providence of God never
"be broken. The moderator then, at their request, tendered the thanks of the
"Assembly to Dr. Jenkins for his able, eloquent and most interesting address."

Certified to be a true copy, J. H. MACKERRAS.

(Page First.

Extract from Proceedings of the General Assembly of the Church of Scot- 10
land, 1866, pp. 61 :

"The Assembly called for the Report of the Committee on Applications of
"Dissenting Ministers and Licentiates for admission to the Church, which was
"given in and read by Mr. MacLeod, the convener.

"The Assembly approved of the report, and in terms thereof authorise the
"Presbytery of Glasgow to take on trial Mr. John Darroch, formerly a minister
"of the Presbyterian Church of Canada in connection with the Church of Scot-
"land, in terms of the

Certified to be a true copy, J. H. MACKERRAS.

(Page second)

20

"Act of Assembly, 1856, and having satisfied themselves of his qualifications, to
"admit him as a licentiate of the Church, and further, authorize the Presbytery
"of Cupar to take on trial Mr. Smith Hutchison, formerly an ordained minister
"of the English Baptist Church, and if they are satisfied, after such examination,
"as to his qualifications and attainments, then to receive him as a licentiate of
"this Church according to the Act of Assembly, 1856, the committee having
"reported that the instructions given last year by the Assembly on Mr. Hutchi-
"son's application had been complied with."

Certified to be a true copy, J. H. MACKERRAS.

(Endorsed.)

30

Petitioner's Exhibit Z 5.—Filed 1st August, 1879.

(Paraphed) G. H. K., Depy. P.S.C.

DOCUMENT VI.

Canada,
Province of Quebec, }
District of Montreal.

Court of Queen's Bench,
Appeal Side.

The Reverend Robert Dobie, (Petitioner in the Court
below) - - - - - Appellant.
and

The Board for the Management of the Temporalities
Fund of the Presbyterian Church of Canada in
connection with the Church of Scotland," *et al.*,
(Respondents in the Court below,) - - - Respondents.

10

The said Appellant, reserving to himself at all times hereafter the right of alleging diminution of the Record in this cause, and imperfection and insufficiency of the return to the Writ of Appeal therein, and the right of making all such motions and using all such lawful ways and means as may be necessary or, expedient touching such diminution of the said Record, and imperfection and insufficiency of the said return, and in the premises, and also reserving to himself the benefit of all other and further reasons to be assigned in Appeal, do hereby say,

That the rules, orders, judgments and proceedings of the Court below, made, rendered and had between the said parties in this cause, wherein this appeal hath been instituted, and more particularly the judgment therein rendered on the twenty-ninth day of December eighteen hundred and seventy-nine, were, and are irregular, erroneous, illegal and unjust, and ought so to be considered and adjudged by the court here; and that the said Appellant ought to be relieved in the premises and restored to all which he has lost and suffered by reason of such irregularity, errors, illegality and injustice, and this for the following among other reasons:—

Because said judgment is erroneous and contrary to law.

Because said judgment is bad and not in accordance with the evidence, facts and issues raised in the said cause.

Because said judgment ought to have been in favor of Petitioner, Appellant, and each and all of the conclusions of his petition should have been granted, and the writ of injunction in said cause issued in the said Court should have been maintained and declared permanent.

Because said Act of the Parliament of the Province of Quebec, thirty-eighth Victoria, chapter sixty-four, (to wit, passed in the thirty-eighth year of the reign of our Sovereign,) was, and is illegal, *ultra vires*, and unconstitutional, and should have been so declared and been set aside, rescinded and revoked.

Because said Board, Respondent, acts illegally and unlawfully as alleged in Petitioner's petition, and should have been by said judgment, so held and declared.

Because said Board is, and has been administering the fund so entrusted to said Board illegally and not in accordance with the statutes and ordinances governing the same.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 62.
Reasons of
Appeal, filed
3rd March
1880.

RECORD.

— —
In the
Court of
Queen's
Bench.
— —

No. 62.
Reasons of
Appeal, filed
3rd March
1880.—
continued.

Because said judgment ought not to have dismissed Petitioner's petition, but the same, and the conclusions thereof, should have been maintained.

Because said Board, Respondents, were not, and have not been, holding and administering said fund as required by law, and the statute seventy-second Victoria, chapter sixty-six, to wit, that statute passed in the twenty-second year of the reign of our Sovereign.

Because said Board, Respondents, is illegally constituted, and several of the pretended members not entitled to assist or act therein and thereabouts.

All which matters and things the said Appellant will be ready to maintain, prove and establish, when and where the Court here may direct. 10

Wherefore the said Appellant humbly prays that by the sentence and decree of the Court here, the said judgment of the Court below, made and rendered in this cause on the twenty-ninth day of December last past, 1879, be reversed and set aside, and that the Court here be pleased to give such judgment in the premises as the Court below ought to have given; and that the said Appellant be thereby relieved and restored to all which he has lost and suffered in the premises; the whole with costs, as well of the Court below as of this Court.

Montreal, 5 February, 1880.

MACMASTER, HALL & GREENSHIELDS, 20
Attorneys for Appellant.

(Duly received copy 6 February, 1880.)

JOHN L. MORRIS,

Attorney for Respondents,
except Sir Hugh Allan and G. Lang.

(Endorsed.)

Reasons of Appeal—Filed 3rd March, 1880.

(Paraphed) L. W. M.

No. 63.
Answer to
Reasons of
Appeal, filed
16th Feby
1880.

DOCUMENT VII.

Province of Quebec, }
District of Montreal. }

Court of Queen's Bench.
Appeal Side.

30

The Reverend Robert Dobie, (Petitioner in the Court
below), - - - - - Appellant.
and

"The Board for the Management of the Temporalities
Fund of the Presbyterian Church of Canada in
connection with the Church of Scotland," *et al.*,
(Respondents in the Court below), - - - Respondents.

The said Respondents reserving to themselves at all times hereafter the right of alleging diminution of the Record in this cause, and imperfection and insufficiency of the return to the writ of appeal therein, and the right of making all such motions and using all such lawful ways and means as may be necessary 40

and expedient, touching such diminution of the said Record, and imperfection and insufficiency of the said return, and in the premises for answer to the reasons of appeal of the said Appellant in this cause filed, do hereby say :

That all and every the allegations, matters and things in the said reasons of appeal contained and set forth are false, untrue and unfounded in fact, and, moreover, insufficient in law to entitle the said Appellant to have and maintain the conclusions in and by the said reasons of appeal taken, or any thereof.

Wherefore the said Respondents humbly pray, that by the sentence and decree of the Court here, the said appeal and reasons of appeal be hence dismissed, and that the judgment of the Court below, made and rendered on the twentieth day of December, eighteen hundred and seventy-nine, from which the present appeal is taken, be affirmed; the whole with costs, as well of the Court below as of this Court.

Montreal, 9th February, 1880.

JOHN L. MORRIS,

Attorney for Respondents,

(Received copy)

Excepting Rev. Gavin Lang and Sir Hugh Allan.

MACMASTER, HALL & GREENSHIELDS,
Attys for Appellant.

(Endorsed.)

Answer to Reasons of Appeal—Filed 16th February, 1880.

(Paraphed) L. W. M.

DOCUMENT VIII.

In the Court of Queen's Bench,
(Appeal side).

Reverend Robert Dobie, - - - - - Appellant.
and

“Board for the Management of the Temporalities Fund of the
Presbyterian Church of Canada in connection with the
Church of Scotland, *et al.*, - - - - - Respondents.

APPELLANT'S FACTUM.

Copy of Judgment appealed from.

Superior Court, Montreal.

Le 29 Décembre, 1879.

Présent en Chambre :—L'Honorable Juge JETTÉ.

(Already printed, see No. 2A on page 14.)

The Appellant is a minister of the Presbyterian Church of Canada in connection with the Church of Scotland. He refused to join the Presbyterian union in 1875, and with ten other ministers, and a large congregational following, continued the Church of Scotland, which is still in full organization in Canada, having now in the Province of Ontario and Quebec thirty-four congregations.

RECORD.

In the
Court of
Queen's
Bench.

No. 63.

Answer to
Reasons of
Appeal, filed
16th Feb'y
1880.—
continued.

No. 64.
Appellant's
Case, filed
16th March
1880.

RECORD. Some of the leading and most influential people in Canada maintain their connection with it. The present suit is virtually in behalf of all the members and adherents of the Church of Scotland in Canada. The Appellant, though deeply interested in the result, is not contending for personal gain.

—
In the
Court of
Queen's
Bench.
—

No. 64.
Appellant's
Case, filed
16th March
1880.—
continued.

It is not the intention of the Appellant to submit a lengthy argument for the consideration of the Court. He is impelled to this course, because the remarks of the Honorable Mr. Justice Jetté, who rendered the judgment appealed from, contain a reasonably fair statement of the contentions of the parties, and a concise and, for the purposes of this argument, a sufficiently correct *resumé* of the events and legislation out of which the present litigation arose, and to which this 10 suit is pendent.

The narrative, however, is not at places strictly correct, and at others is too cramped. For example, it does not appear with sufficient clearness from his Honours remarks, as is the fact, that the Appellant and the other commuting ministers agreed, on certain fundamental conditions, to renounce their *personal* claims upon the Commuted Fund,—and consented to accept a reduced life annuity on *specified* conditions, in order that they might form a *permanent* endowment for the benefit of the Presbyterian Church of Canada in connection with the Church of Scotland.

The appendix to the Journals of the Legislative Assembly of Canada, for the 20 year 1856, (See Respondent's Factum p. 115, line 20,) establishes that the Government actuary estimated that the present (Petitioner) Appellant, was entitled personally to receive an annuity of £150 per annum, on the amount of capital apportioned to him, namely, £2,200.

The voluntary renunciation of individual ministers then made for the purpose of permanently endowing "The Church of our Fathers" is a singular and worthy act of the devotion of the commuters to the Church of Scotland in Canada, (see the Pastoral Letter of the Reverend John Jenkins, D.D., moderator of the Synod,) that must challenge the respect and admiration of every man capable of appreciating sincerity of purpose and unadulterated self-denial. The Government 30 transacted the business matter of paying over the aggregated individual claims to commissioners who produced the moral voucher of the Synod, in a resolution accrediting them to the government and the legal authority to transact and grant a discharge, in the *individual power of attorney from each minister*.

The Commissioners acted not only on behalf of the Church but as the attorneys of the ministers separately. The Reverend Dr. Cook writing to individual ministers for their powers of attorney to authorize him to grant a receipt to the Government for the individual claims of ministers, reiterates in his letter (Appendix page 12, line 30) the fundamental conditions upon which the commuting ministers agreed to form the Temporalities Fund, and expressed his 40 thankfulness "to Almighty God that a way so easy is open to them for conferring so important a benefit on the Church."

The condition upon which the Appellant and the other ministers agreed to commute their claims is expressed in the first resolution of the Synod at pages 9 and 10 of the Appendix.

"1st. That it is desirable that such commutation, if upon fair and liberal terms, should be effected; and that the Rev. Alex. Mathieson, D.D., of Mont-

- “ real, the Rev. John Cook, D.D., of Quebec, Hugh Allan, Esq., of Montreal, John Thompson, Esq., of Quebec, and the Hon. Thomas McKay, of Ottawa city, be the Synod's Commissioners, with full power to give the formal sanction of the Synod to such commutation as they shall approve, the said Commissioners being hereby instructed to use their best exertions to obtain as liberal terms as possible; the Rev. Dr. Cook to be convener; three to be a quorum; the decision of the majority to be final, and their formal acts valid; but that such formal sanction of the Synod shall not be given except in the case of ministers who have also individually given them, the said Commissioners, power and authority to act for them, in the matter to grant acquittance to the Government for their claims to salary, to which the faith of the Crown is pledged; and to join all sums so obtained into one fund, which shall be held by them till the next meeting of the Synod, by which all further regulations shall be made; the following, however, to be a fundamental principle, which it shall not be competent for the Synod, at any time, to alter, unless with the consent of the ministers granting such power and authority; that the interest of the fund shall be devoted, in the first instance, to the payment of £112 10s. each, and that the next claim to be settled, if the fund shall admit, and as soon as it shall admit of it, to the £112 10s., be that of the ministers now on the Synod's roll, and who have been put on the Synod's roll since the 9th May, 1853; and, also, that it shall be considered a fundamental principle, that all persons who have a claim to such benefits, shall be ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and that they shall cease to have any claim on, or be entitled to any share of said commutation fund whenever they shall cease to be ministers in connection with the said Church.”

From the terms of this resolution and of Dr. Cook's letter, it is not surprising that the Appellant should have been lulled into a feeling of security and confidence that a “ permanent endowment ” (3rd resolution, page 10, Appendix line 30) had been provided for the Church of Scotland in Canada. He renounced his rights, relying upon the good faith of the Synod, and upon the stringency of the fundamental principle (regulating the disposition of the capital and interest) which (it was declared) it shall not be competent for the Synod at any time to alter, unless with the consent of the ministers granting such power and authority.

A clear understanding of the rights and claims of the Petitioner is essential in order to appreciate the grievances of which he complains.

Again, the Honourable Judge who rendered the judgment has unwittingly assumed that the Synod had supreme power in all matters regarding the fund in dispute. The Synod's powers were simply supreme in ecclesiastical discipline, but it had no power to alter the disposition of the fund in dispute. To a limited extent it assumed power (not without remonstrance) to deal with a portion of the revenues arising from the fund. But as to the capital, and by far the major portion of the revenues, the Synod was powerless, such matters being regulated in accordance with the fundamental conditions (see Appendix, page 9 and 10) upon which the creation of the fund was based, and the statutory enactment (22 Vic., cap. 66, Canada) regulating the terms of the Respondents' holding and administration.

RECORD.

In the
Court of
Queen's
Bench.

No. 64.
Appellant's
Case, filed
16th March
1880.—
continued.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 64.
Appellant's
Case, filed
16th March
1880.—
continued.

The Petitioner instituted this action not against the Synod or the Church, but against the corporation, Respondents, and the members of the corporation. Against these alone he founds his complaint, and they must justify their acts and administration, not by references to such moral countenance as they pretend to have received from the Synod—a voluntary association, not a party to this issue—but by virtue of the powers derived from the original Act of Incorporation and the amendment thereto (38 Vic., cap. 64) passed by the Quebec Legislature.

The Respondents must rely upon Legislative and not Synodical authority.

The Respondents invoke the Act of the Quebec Legislature, which is 10 impugned by Petitioner as being unconstitutional, and beyond the competency of Provincial Legislation.

It is clear at the outset that if the Provincial Act is within the competency of the local Legislature, the Petitioner is without legal ground of complaint.

It is true the intention of the founders of the fund has been invaded.

1. The proof establishes that the original capital (amounting to £127,000) which could not be diminished under the Act 22 Vic. cap. 66, Canada, has been 20 trenced upon and reduced (under the authority of Amending Act, 38 Vic., cap. 64, sec. 1) in four years of the Respondents' administration under the new authority, to the extent of \$75,000.

2. The Provincial Acts establish that the extinction of the Endowed Church is not only sought, but openly contemplated, (38 Vic., cap. 61, sec. 1 Quebec,) and that the balance of the fund must ultimately go "to aiding weak charges in the united church" (38 Vic., cap. 64 sec. 1).

3. The Provincial Acts further establish that the Appellant, though a founder of the fund, is now disfranchised, and deprived of the right of administration, that privilege being reserved only for "ministers, or members of the united church" (38 Vic. cap. 64, sections 3 and 8, Quebec).

But if all these things may be constitutionally done by the Provincial Legis- 30 lature, the Appellant recognizes that he is without relief from the Courts.

The Appellant therefore seeks in *limine* to impugn the local Acts. It is not necessary to repeat at length his contentions in this respect. This has been succinctly done by the Honorable Judge who rendered the judgment. Our jurisprudence furnishes but few, if in fact any, precedent exactly in point. Our Federal Constitution is new, and sufficient time has not elapsed to permit important constitutional questions akin to the present to be submitted to the Courts. He can do little more than shortly and clearly state his pretensions, and leave the matter to the decision of the Court. In this respect he regrets that he is unable to aid the Court with precedent; but he relies with confidence on the interpretation the 40 Honorable Judges may be pleased to give the statutes.

If the controversy were simply as to a specific piece of land, or a particular building, having a precise and well-defined Provincial *locus*, whose tenure was purely of a local character and unfettered with the consideration of questions of a general character, Appellant would contend without hope. Indeed in this respect Appellant recognizes that the jurisprudence of the Courts, and especially of the Courts of the Province of Ontario, would afford decisions against such pre-

tension. But in this instance, the controversy is over a large sum of money, amounting to about \$500,000, proceeding originally from the bounty of the Crown—the proceeds of the sale of Crown lands belonging to the extended domain of the old Province of Canada. The fund has no Provincial *situs*. It is not Provincial in origin, in application, or in destination. Its only determinable *locus* is the place of meeting for the time of the Board, Respondents. This Board is not restricted to a Provincial place of meeting. Its meetings are ancillary to those of the Synod, and those of the Synod are nomadic—now in Ontario, and now in Quebec; but not permanently or statedly in either. The creators and beneficiaries of the Fund reside in both the Provinces of Ontario and Quebec. The Appellant resides in Ontario. His eligibility to election as a member of the Board is not questioned by the Ontario Statutes; but he is disfranchised by the Quebec Act. At a meeting of Synod or Assembly held in Ontario, he is debarred by a Quebec Statute from eligibility for nomination and election as a member of the Board, then meeting in Ontario. Why should his rights in Ontario be invaded by a Quebec Statute?

He is, thus, obviously deprived of one of his most valued rights as a British subject—the right of administering a property to which his claims are conceded, even by the terms of the Act impugned.

The British North America Act, sec. 92, declares that “in each Province the Legislature may exclusively make laws in relation to matters coming within the class of subjects next hereinafter enumerated, that is to say:—”

“13. Property and civil rights in the Province.” Appellant contends that the property here in question is not legally and constitutionally property “in the Province” within the meaning of this clause, and that the “civil right” of administration and control of which he has been deprived is not in this instance a “civil right,” Provincial in character, but one that he possesses in his quality as a British subject, and of which he can only be deprived by civil death, or the deprivation of his rights as a “British subject” under the laws of the British Empire, (Civil Code of Lower Canada, article 30). Blackstone’s pithy protest against the infringement “of the sacred and inviolable right of private property” and his defence of the “absolute rights which appertain to every Englishman” are in glaring contrast with the legislative vandalism of Quebec. The whole tenor of the section 92 of the British North America Act, contemplates application to matters purely Provincial, and not general in character. Sub-section 10 expressly restricts the Provincial legislation to “local works and undertakings,” and prohibits legislation as to “other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Provinces.” Section 11 restricts the power of incorporation to “Companies with Provincial objects.” Whereas Section 16, completing the category of Provincial powers, sums up the bill of fare under the significant heading: “and generally all matters of merely local or private nature in the Province.” Is there anything of a merely local or private nature in the Fund in question, or in the Appellants’ rights of administration? No, never, it is very observable how carefully the Imperial Statute in every instance restricts even these limited powers with the words “in the Province.”

When the Statute (B. N. A. sec., 92, sub-sec. 13) declares that “property

RECORD.

In the
Court of
Queen's
Bench.

No. 64.
Appellant's
Case, filed
16th March
1880.—
continued.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 64.
Appellant's
Case, filed
16th March
1880.—
continued.

"and civil rights *in the Province*," should come within the exclusive jurisdiction of the local Legislature, can it be assumed that all property and civil rights, come within Provincial cognizance? If so, why were the words "in the Province," scrupulously appended? We are aided further in coming to the conclusion that there are "property and civil rights" which do not come under the exclusive control of the Provincial Legislature, by the 91 section of the same act declaring the powers of the Dominion Parliament.

"It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes 10 of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say:—

"(29.) Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act, assigned exclusively to the Legislatures of the Provinces.

"And any matter coming within any of the classes of subjects enumerated 20 in this section, shall not be deemed to come within the class of matter of a local or private nature, comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces."

The Dominion Parliament exercises exclusive legislative control in all matters not coming within the classes of subjects by this Act assigned "exclusively to the Legislatures of the Provinces." Is the question of "property and civil rights" *exclusively* assigned to the Provinces? Not by the terms of section 92; whereas sub-section 29 of section 91 expressly gives to the Dominion Parliament power to legislate in "Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the 30 Legislatures of the Provinces."

The powers of the Local Legislatures are restricted—parsimoniously—to certain specific matters; all beyond comes within the domain of Dominion enactment.

The public and ultra-Provincial character, of the origin, administration and application of this Fund, it is submitted, takes it out of the category of a "local and private" matter "in the Province," and appropriately assigns it to the legislation of the general Parliament.

The Act impugned is simply an amending Act. It is contended that Act 22 Vic., cap. 66 is still in force. The latter Act is passed in pursuance of a long 40 series of negotiation and legislation, Imperial and Provincial. It is broad in its character, and is the coping stone of the successful struggle of the Church of Scotland in Canada to secure a portion of the national estate reserved for the benefit of a "Protestant clergy" in Pitt's Constitutional Act, 1791.

The rights for which the Appellant is now contending were carefully guarded by Imperial and Provincial legislation; and it is respectfully submitted that it is not within reasonable contemplation that they should be divorced from

the Federal Parliament and consigned to the Municipal Legislatures of the RECORD.
Provinces.

Looking to the origin of the Fund—the royal bounty—there would seem to be not only a constitutional necessity, but legislative propriety, in applying for the authority of the Queen and her Parliament, rather than of her deputy's deputy and his Legislature, in all matters affecting its disposition and administration.

The Appellant respectfully submits that the "faith of the Crown," which was by the statutes, Imperial and Provincial (Canada), pledged to the maintenance of the rights of the Church of Scotland in Canada, has been disregarded and invaded by the Quebec Act, and that his own civil rights have been violently interfered with by a Legislature incompetent to deal with matters coincident in character and extent with the domain of the Crown, in the old Province of Canada.

Montreal, 11th March, 1880.

MACMASTER, HALL & GREENSHIELDS,
Attorneys for Appellant.

*In the
Court of
Queen's
Bench.*

No. 64.
Appellant's
Case, filed
16th March
1880.—
continued.

REMARKS OF THE HONORABLE MR. JUSTICE JETTE ON RENDERING JUDGMENT.

(As reported in the "Montreal Gazette" of 5th January, 1880.)

The Reverend Robert Dobie, a minister of the Presbyterian Church of Canada in connection with the Church of Scotland, a member of the Synod of the said Church, and a minister of the Saint Andrew's Church and congregation of Milton, in the Province of Ontario, obtained an injunction the 31st December, 1878, against the corporation, Respondents, and against the Reverend M. M. Gordon, Cook, Jenkins, Lang and Mackerras; M. M. Morris, Walker, Darling, Dennistoun, Mitchell and Sir Hugh Allan, members of the said corporation, ordering them to abstain specially from disposing of the fund of the said corporation, by making any payments therefrom, and generally from all acts of administration of the property under their control, until further order of Court. In spite of the proceedings of the Respondents, to have this order set aside, the injunction thus far stands, and the question now before me is on the merits of the Petitioner's claim.

Although I have already given, in connection with an incidental proceeding in this case, an analysis of the legislation on which the present litigation is based, the importance of the suit and the large number of persons, not parties thereto, but interested therein, almost equally with the litigants themselves, leads me to recur to this legislation, so as to make the claims of the parties clear and easily understood.

The Quebec Act (1774) had guaranteed to the Roman Catholic clergy the right they possessed before the cession of this country to England, to demand and receive their customary *dimes* or tithes. The Protestant clergy saw in this guarantee a privilege accorded to the Roman Catholic Church which justified them in claiming a corresponding favor. In 1791, by the Statute 31 George III, cap. 31 (amending the Quebec Act), the Imperial Parliament, wishing to acknowledge

No. 64A.
Remarks of
Mr. Justice
Jetté, on
rendering
the judgment
appealed
from.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 64A.
Remarks of
Mr. Justice
Jetté, on
rendering
the judgment
appealed
from.
—continued.

this claim, made provision for the support of a Protestant clergy in the two Provinces of Upper and Lower Canada in sanctioning an appropriation by the Governments of these two Provinces of a reserve for this purpose of certain lands from the public domain. These lands thus appropriated were styled Clergy Reserves.

In 1827, by the Act 7 and 8 George IV, the Imperial Parliament authorized the sale of a part of these lands, on condition that the proceeds were invested in the public funds and the revenues exclusively applied to the maintenance of a Protestant clergy. In 1840 the Statute 3 and 4 Victoria, ch. 78, sanctioned the sale of all these lands, under certain restrictions as to the quantity to be sold annually. In 1853 the Imperial Parliament authorized the Legislature of the 10 United Province of Canada to legislate for the management of the Clergy Reserves, with this restriction, that the moneys theretofore given to the clergy of the Churches of England and Scotland, or to any other denomination of Christians, should not be withheld, reduced, or in any manner affected by the legislation of the said Province during the lives of the persons having a right in the said annual grant (16 Victoria, ch. 21).

By virtue of the powers conferred on it, the Legislature of Canada enacted in 1854 (18 Victoria, ch. 1) that the proceeds of the lands constituting the "Clergy Reserves" situated in Upper Canada and those in Lower Canada should form two separate and distinct funds, which should be styled, respectively, "The 20 Municipalities Fund of Upper Canada" and the "Municipalities Fund of Lower Canada," and that, conformably to the Imperial Acts, these funds should be charged, firstly, and in preference over any other charge, with the payment of the above-mentioned annual allowances to the Protestant clergy, during the lives of the incumbents, who had this right at the time of the sanction of the Statute 16 Victoria, ch. 78, namely, the 9th May, 1853. To secure this payment it was enacted, that the capital required to guarantee these annual allowances should be invested in the public funds, and the surplus, if any, apportioned to the municipalities of the said two Provinces, according to population.

The rights which the Imperial Parliament desired to protect and secure under 30 the Statute 16 Victoria, ch. 78, were thus preserved, but the system thus organized made the State the debtor for these annual appropriations, and the administrator of the fund representing the same, during the full term of the lives of the then incumbents. The third section of this law clearly indicates that this style of enactment, adopted to satisfy the rule of the Imperial Act, was not what our Parliament preferred. Anxious to put aside all appearance of union between Church and State, as it declared, and to settle promptly and finally all reclamations that might exist against these funds of the "Clergy Reserves," the Legislature, by this 3rd section, authorized the Executive to commute and extinguish the same, with the consent of the parties interested, by the immediate payment 40 of the capital (at the rate of 6 per cent.) calculated on the basis of the probable life of each incumbent.

At the beginning of this legislation the clergy of the Church of England had been alone benefitted, and had raised the pretension of being solely entitled to the benefit of these reserved lands. But about the year 1820, the members of the Church of Scotland presented a claim, as well for their clergy as for those of the other Protestant denominations, for a share and interest in these Reserves,

proportioned to the number of the members of each Church. This reclamation, for a long time contested and opposed, was finally admitted, and when the Statute of 1854, to which I am about to refer, was passed, the right of the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland to the benefits of this statute had been for a long time acknowledged.

The provisions of the law of 1854, relative to the commutation of the annual allotments, payable to each minister, appearing satisfactory, a meeting of Synod of said Church was convoked to decide on united action in relation to this commutation. The meeting was held in January, 1855, and the following resolution 10 unanimously adopted :

“Resolved, 1st. That it is desirable that such commutation, if upon fair and liberal terms, should be effected; and that the Rev. Alexander Mathieson, D.D., of Montreal, the Rev. John Cook, D.D., of Quebec, Hugh Allan, Esq., of Montreal, John Thompson, Esq., of Quebec, and the Hon. Thomas McKay, of Ottawa city, be the Synod's Commissioners, with full power to give the formal sanction of the Synod to such commutation as they shall approve, the said Commissioners being hereby instructed to use their best exertions to obtain as liberal terms as possible; the Rev. Dr. Cook to be convener; three to be a quorum; the decision of the majority to be final, and their formal acts valid; but that such formal 20 sanction shall not be given, except in the case of ministers who have also individually given them, the said Commissioners, power and authority to act for them in the matter, to grant acquittance to the Government for their claims to salary, to which the faith of the Crown is pledged; and to join all sums so obtained into one fund, which shall be held by them till the next meeting of Synod, by which further regulations shall be made; the following, however, to be a fundamental principle which it shall not be competent for the Synod at any time to alter, unless with the consent of the ministers granting such power and authority; that the interest of the fund shall be devoted, in the first instance, to the payment of £112 10s. each, and that the next claim to be settled, 30 if the fund shall admit, and as soon as it shall admit of it, to the £112 10s., be that of the ministers now on the Synod's roll, and who have been put on the Synod's roll since the 9th May, 1853; and also, that it shall be considered a fundamental principle that all persons who have a claim to such benefits shall be ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and that they shall cease to have any claim on or be entitled to any share of said commutation fund whenever they shall cease to be ministers in connection with said Church.

“2nd. That so soon as said commutation shall have been decided upon, and agreed to by the said Commissioners, the Rev. John Cook, D.D., of Quebec, shall 40 be fully empowered and authorized, and this Synod hereby delegates to the said Rev. John Cook full power and authority to endorse and assent to the several Powers of Attorney from the individual parties on behalf of the said Synod and in their name, and as their act and deed, as evidencing their assent thereto.

“3rd. That all ministers be, and they are hereby enjoined and entreated (as to a measure by which, under Providence, not only their own present interests will be secured, but a permanent endowment for the maintenance and extension of religious ordinances in the Church) to grant such authority in the fullest man-

RECORD.

*In the
Court of
Queen's
Bench.*

No. 64A.
Remarks of
Mr. Justice
Jetté, on
rendering
the judg-
ment appeal-
ed from.
—continued.

RECORD. ner, thankful to Almighty God that a way so easy lies open to them for conferring so important a benefit on the Church.

*In the
Court of
Queen's
Bench.*

No. 64A.
Remarks of
Mr. Justice
Jetté, on
rendering
the judg-
ment appeal-
ed from.
—continued.

"4th. That the aforesaid Commissioners be a committee to take the necessary steps to get an Act of Incorporation for the management of the general funds so to be obtained, the aforesaid Commissioners to constitute the said corporation till the next meeting of Synod, when four more members shall be added by the Synod."

Agreeable to this resolution all the ministers of the said Church gave full power to the Commissioners, named for this purpose by the Synod, to arrange with the Government, and to unite all the sums thus realized in a common fund, according to the terms of the said resolution. The commutation of the several individual reclamations produced a sum total of £127,448 5s 0d, which the Government handed to the Commissioners named by the Synod. 10

In 1858 these Commissioners acting according to the instructions contained in the aforementioned resolution (§4), demanded and obtained from the Parliament of United Canada an Act creating a special corporation for the administration and the possession of this fund of £127,448 5s 0d, and of all other sums by which it might thereafter be increased. This corporation received the name of "The Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," and is one of the Respondents in this case. (22 Victoria, chap. 66.) It is declared by this statute that this corporation is created "for the management and holding of certain funds of the Presbyterian Church of Canada in connection with the Church of Scotland, now held in trust by certain Commissioners, hereinafter named, on behalf of the said Church and for the benefit thereof;" but by the first section it is enacted that "such holding is subject always to the special condition that the annual interest and revenues of the said moneys and fund now in their hands shall be and remain charged and subject, as well as regards the character as the extent and duration thereof, to the several annual charges in favor of the several ministers and parties severally entitled thereto, of the several amounts and respective characters and durations as the same were constituted and declared at the formation of the said funds and the joining of the same into one fund."..... 20 30

The second section of this statute then provides for the mode of election and replacing of members of this Board created a corporation as aforesaid. According to the dispositions of this section, the Board shall be composed of twelve members, five being ministers and seven laymen; four of these members in order of seniority, viz., two ministers and two laymen retiring each year, on the third day of the annual assembly of Synod of said Church, and being replaced by two ministers and two laymen elected by said Synod. In case of death, resignation or absence from the Province, or withdrawal from communion in said Church, the vacancies shall be filled by the other members of the Board, subject to the ratification of the appointments thus made by the Synod at its next ensuing meeting, so that, as stated in the second section, "this Board shall always consist of twelve members, five of whom shall be ministers and seven laymen, and all being ministers or members in full communion in said Church." 40

The members of this Board, thus organized, thenceforth administered the

property of said Church conformably to the powers conferred on them, without their right having ever been questioned until the occurrences which gave rise to the present litigation. It results from the facts proved, that from 1870 and 1874 a proposed fusion of the Presbyterian Church of Canada in connection with the Church of Scotland, with three other Churches, viz.: The Canada Presbyterian Church, the Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces, had been more or less discussed at different times.

In 1874, the conditions of this fusion appearing to be acceptable to the parties interested, an Act was sought and obtained from the Legislature of Ontario, authorizing the union and fusion of the said Churches, so as to form but one body or denomination of Christians, under the name of the "Presbyterian Church in Canada." This Act is the 38th Victoria, ch. 75, of the Statutes of Ontario, and was sanctioned the 24th December, 1874. The provisions of this statute, of which the existence and authenticity are admitted, are of great importance, and have considerable bearing on the rights of the parties in this cause. It is therein firstly declared:—

That all the property situated in the Province of Ontario, and held at the time of the union of the said Churches by every congregation in connection or communion with any of them, shall thenceforth belong to the said United Church, with this restriction, nevertheless, that those congregations of the said Churches which are unwilling to enter into this union might within six months declare their dissent by a vote of the majority of their members, and in such case the property of such congregation dissenting should not be affected by the said statute. Then section 8 of this statute declares that as the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland are entitled to receive an annual revenue, proceeding from the funds styled the "Temporalities Fund," administered by a Board incorporated by the heretofore Province of Canada, and as it is proposed to maintain intact for these ministers during life this annual revenue, it is enacted that the present members of this Board shall continue in office and administer the said fund on behalf of the ministers now deriving a revenue therefrom; this revenue being preserved intact for the said ministers so long as they shall remain Presbyterian ministers in good standing in the Dominion of Canada, whether in active service or retired, and whether they are or are not in connection with the said United Church.

Lastly, that so soon as any part of the revenue provided from this fund is not required to meet the payment of the annual allowances coming to the said ministers, or of any other charge or expense on said fund, such part of said revenue shall be placed at the disposal of the said United Church; and after the death of the last survivors of said ministers, any balance of said fund shall belong to the said United Church. By a final enactment of the said statute, it is declared: "that the union of the said Churches shall be accomplished so soon as the terms of the said union are signed by the moderators of each of them." Such are, in substance, the provisions of this statute which bear on the present litigation.

At the same time that this legislation was obtained from the Legislature of Ontario, a similar law was sought from the Legislature of Quebec, which passed

RECORD.

*In the
Court of
Queen's
Bench.*

No. 64A.
Remarks of
Mr. Justice

Jetté, on
rendering
the judgment
appealed
from.

—continued.

RECORD. the statute 38 Victoria, ch. 62 (sanctioned the 23rd February, 1875). This statute corresponds exactly with that of Ontario, and enacts:

*In the
Court of
Queen's
Bench.*

No. 64A.
Remarks of
Mr. Justice
Jetté, on
rendering
the judg-
ment appeal-
ed from.
—continued.

"Firstly. That the ownership of the property situated in the Province of Quebec and belonging to every congregation in connection with any one of the said United Churches shall pass immediately, on the consummation of the union, to the said United Church, unless a vote of the majority of such congregation rejects such union, in which case the said property shall not be affected by this law. The 11th section of this statute then repeats, with certain modifications, the provisions of section 8 of the Statute of Ontario, relative to the Temporalities Board of the Presbyterian Church of Canada in connection with the Church of Scotland; and after having stated that this fund is administered by a Board incorporated by the heretofore Province of Canada, and that it is proposed to maintain the revenue of the said fund for the ministers having a right therein, and to their successors, even if the congregation over which they preside does not enter the union of the said Churches." The section enacts:

"That the present members of the said Board shall continue in office and manage the said fund on behalf of the said ministers now deriving revenue therefrom, and the income to said ministers shall be continued to them and to their successors, as aforesaid, so long as such Presbyterian ministers are in good standing in the Dominion of Canada, whether exercising their ministry or retired, or whether they are or are not in connection with the United Church; provided that the successors of ministers of congregations, in the Province of Quebec, in existence at the period of the union, and not entering into the same, shall preserve the same rights to the benefits of the Temporalities Fund, as they would have had if such union had not occurred."

It is further declared by the same section of this Act, that so soon as a part of the accumulated revenue of the said fund shall not be required for the payment of the annual allowances to the ministers entitled thereto, it shall pass to the said united Church, which shall have the property therein, and may dispose of it, and that it shall do the same with that which shall remain of the said fund, after the death of the last of the incumbents having a right in the said revenue. This 11th section also enacts, that each vacancy occurring in the said Temporalities Board (namely, the corporation, Respondents), shall not be filled in the manner heretofore adopted, but in the manner provided by an Act passed during the same session and entitled "An Act to amend the Act intituled 'An Act to incorporate the Board for the management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland.'"

Lastly, section 14 enacts: That the union of the said Churches shall be complete, so soon as a notice shall be published in the *Quebec Official Gazette*, declaring that the articles of this union have been signed by the moderators of the said respective Churches.

As appears by this analysis, the enactments of these two Statutes of Quebec and Ontario are substantially identical. The only differences to be observed are, 1st. That the Statute of Quebec secures the right in the revenue of the Temporalities' Fund of the said Presbyterian Church of Canada in connection with the

Church of Scotland, not only to the actual ministers, as the Ontario Statute does, but also to their successors; and 2nd. That the Statute of Quebec subjects the filling of vacancies on the Temporalities Board, to the special provisions of the Act to which I am about to refer, while the Statute of Ontario maintains purely and simply the administration of this fund to the actual members of the Board.

At the same time that the Quebec Legislature passed the Act for the union of the said Churches it passed another Act, 38 Victoria, chap. 64, to amend the Act of Incorporation of the Temporalities Board of the said Presbyterian Church of Canada in connection with the Church of Scotland. This second Act, which is a natural sequence of the former one, may be said to be its complement. The Legislature commences by declaring that the union of the said Churches and the resolutions of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, adopted in consequence and referring to their temporalities, render it necessary to change certain regulations in the charter incorporating the said Board, wherefore it enacts:

1. That until the rights of the ministers and probationers of the said Church in the said Temporalities Fund shall have ceased to exist, this property shall continue, as heretofore, entrusted to a Board, whose functions shall be continued, after the completion of the said union, in the manner provided in the said Act, which Board shall administer the property according to the same principles and for the same objects as at present, and it is declared that these rights shall be established as follows:

(1.) The annual payment to ministers now receiving four hundred and fifty dollars (\$450), four hundred dollars (\$400), or two hundred dollars (\$200) will be the same amount during their lifetime and good standing in the Church. (2.) The annual payment of two thousand dollars (\$2,000) granted to Queen's College will be continued in perpetuity. (3.) The annual payment of two hundred dollars (\$200) to all the ministers who shall be on the Synod's roll, and by all recognized probationers and licentiates engaged in active service at the time of the union, will remain the same during the lifetime and good standing in the Church of such ministers, probationers or licentiates; all salaries of two hundred dollars to be increased to four hundred dollars each when the recipients of them shall have retired from the active duties of the ministry. The Temporalities Board shall, if necessary, draw upon the capital of the fund to meet the aforesaid requirements. Then it is provided that so soon as any part of the revenue accruing from the said fund, or any part of the fund itself which is not required to meet the payments of said charges, shall be subject to the disposal of said united Church.

2. That all ministers and probationers possessing rights in the said Temporalities Fund, who decline to become parties to such union of the said Churches, shall be entitled nevertheless to all their rights as if they had entered into such union, so long as they shall continue to be Presbyterian ministers in good standing within the Dominion of Canada; and that the successors of these ministers shall retain the same rights in the said fund as if the union of the said Churches had not taken place.

3. That as often as any vacancy in the Board of Management of said Tem-

RECORD.

*In the
Court of
Queen's
Bench.*

No. 64A.
Remarks of
Mr. Justice
Jetté, on
rendering
the judg-
ment appeal-
ed from.
—continued.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 64A.
Remarks of
Mr. Justice
Jetté, on
rendering
the judg-
ment appeal-
ed from.
—continued.

poralities Fund occurs, these beneficiaries may each nominate a person being a minister or member of the said United Church, or in the event of their being more than one vacancy, then one person for each vacancy, and the remanent members of the said Board shall thereupon, from among the persons so nominated as aforesaid, elect the person or number of persons necessary to fill such vacancy or vacancies, selecting the person or persons who may be nominated by the largest number of beneficiaries, but in the event of failure on the part of the beneficiaries to nominate as aforesaid, the remanent members of the Board shall fill up the vacancy or vacancies from among the ministers or members of the said United Church.

Section 8 provides that the third section of this Act shall continue in force until the number of beneficiaries is reduced below fifteen; and so soon as the number of beneficiaries is reduced below fifteen the said Board shall be continued by the remanent members filling up any vacancy or vacancies from among the ministers or members of the said United Church. The remaining enactments of this Act apply only to the rules of procedure to be followed in the election of new members of the Board, in case of vacancies, and for the auditing of the accounts of the administrators. The last provision is that this Act shall come into force so soon as a notice shall be published in the *Quebec Official Gazette* that the union of said four Churches has been consummated.

These several statutes having been sanctioned and in force, the Synods of the four Churches, the union of which was authorized by the corresponding statutes of Quebec and Ontario, assembled in Montreal in June, 1875, to consummate the proposed union. Agreeably to a previous understanding with the other Churches, the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, assembled in St. Paul's Church, in Montreal, and on the 14th June, 1875, decided by a very large majority, that on adjourning next morning it would proceed to the Victoria Hall, the appointed place for the consummation of the said union and the holding of its General Assembly of the said Churches, under the name of the General Assembly of the "Presbyterian Church in Canada," 30 and at the same time gave full power to its moderator to sign in the name of the Synod, the preamble and the basis of union, and also the resolutions adopted relating to those documents. The Petitioner and nine other members of Synod protested in writing against this resolution. The following day, the 15th June, 1875, the Synod being assembled in the same place, a notarial protest was served on the moderator against the projected union of the said Churches, in the name of several members of the said Presbyterian Church of Canada, and among others of the Petitioner. Notwithstanding this protest, the Synod adjourned to the Victoria Hall, as resolved the previous evening. Agreeably to this resolution, the great majority of the members of the aforesaid Synod proceeded to the Vic- 40 toria Hall, where the members of the Synod of the other Churches had also assembled the documents relative to the union of the said Churches were signed, and the members of the said Synods then organized themselves into a General Assembly of the United Church, under the name of the "Presbyterian Church in Canada."

Nevertheless, after the departure of this majority of the members of Synod of the said Presbyterian Church of Canada in connection with the Church of

Scotland for the Victoria Hall, the minority who had protested against the union, and who had remained in the building where the Synod met, chose the Petitioner as moderator, in place of the one who had left with the majority, and continued the proceedings of Synod of the said Church. Persisting thenceforth in their refusal to enter the said united Church, this minority continued to hold, each year, its annual Synodical meetings, declaring that it formed and constituted the Presbyterian Church of Canada in connection with the Church of Scotland, and that those persons who had adopted the union, had abandoned the said Church, and had voluntarily separated themselves therefrom, and no longer

10 formed a part thereof. Starting from this point, the Petitioner, after having stated in his petition his quality of minister of the Presbyterian Church of Canada in connection with the Church of Scotland, and his right to an annual revenue of \$450 for life from the Temporalities Fund of the said Church, as being one of those who in 1855 profited by the commutation offered by the Government of Canada, and alleged that this fund had been created, subject to the conditions formally stated in the resolution of Synod, conditions recognized and guaranteed subsequently by the Act of incorporation of the Board to whom was entrusted the administration of the fund, adds:

20 That the Statute of the Province of Quebec, 38 Victoria, ch. 64, amending the Act of incorporation of the Temporalities Board, is unconstitutional; that it exceeds the jurisdiction and authority of the Legislature of the said Province, and consequently is null and of no effect. The reasons stated by the Petitioner in support of this allegation are:

1st. That the powers granted to the corporation under the Act of the Parliament of Canada, 22 Victoria, ch. 66, are not limited, and applicable to one Province only, but are of a general nature, and affect the rights of persons resident in the two Provinces of Quebec and Ontario. That consequently the Act of the Legislature of Quebec amending this statute is not of a local and private nature, but affects the rights of persons not resident in this Province, and not 30 subject to the jurisdiction of its Parliament, and therefore is in excess of its authority.

2nd. That the rights and interests of the Petitioner in the Temporalities Fund of the said Presbyterian Church are not of a private nature, but are a matter of general interest.

3rd. Lastly, that the said Provincial Act is unconstitutional: 1st. In that it authorizes the payment of the annual allowances to the ministers who have ceased to be members of the Presbyterian Church of Canada in connection with the Church of Scotland. 2nd. In that it allows the corporation, Respondents, to draw on the capital of this fund to pay the annual allowances. 3rd. In that it 40 provides for the filling of vacancies in the Temporalities Board with members of the united Church; thus depriving the beneficiaries of all right of administration of the said fund, contrary to the dispositions of the Act creating the said corporation. Consequently, the Petitioner alleges that the Provincial Act has no legal existence, that the Statute of 1858 alone is in force, and that the rights of the parties are governed by its provisions.

The Petitioner then alleges that since the 15th June, 1875, the Revs. John Cook, James C. Muir and George Bell became members of the said United Church,

RECORD.

*In the
Court of
Queen's
Bench.*

No. 64A.
Remarks of
Mr. Justice
Jetté, on
rendering
the judgment
appealed from.
—continued.

RECORD. styled the Presbyterian Church in Canada, which is an entirely distinct organization from the Presbyterian Church of Canada in connection with the Church of Scotland; that they abandoned this latter Church and ceased to be members thereof, and therefore have no right in the benefits resulting from said Temporalities Fund. That the Revs. John Fairlie, David W. Morrison and Charles A. Tanner, who receive annual allowances from the said fund, have no right therein; firstly, because they are not among the number of those ministers who, in 1855, commuted their claims with the Government, and secondly, because they have also abandoned the said Presbyterian Church of Canada in connection with the Church of Scotland to become members of the new Presbyterian Church in 10 Canada.

No. 64A.
Remarks of
Mr. Justice
Jetté, on
rendering
the judgment
appealed
from.
—continued.

Let us say, before proceeding further, that of the six ministers just named only one is a party to this cause, the Rev. John Cook, and consequently the rights of the others, who have not been impleaded, cannot in any manner be affected by the judgment of this Court.

Lastly, the Petitioner alleges that, by the terms of the statute of 1858, four of the members of the Temporalities Board were bound to retire, and to be replaced each year, and that in order of seniority the Rev. Messrs. Jenkins and Lang, and Messrs. Walker and Dennistoun ceased to be members of the Board in June, 1876; the Rev. Messrs. Cook and Gordon and Messrs. Morris and Sir Hugh 20 Allan also ceased to be members of the Board in June, 1877; that the Rev. Mr. Mackerras, and Messrs. Darling and Mitchell ceased to be members of the Board in June, 1878; and that none of them have been regularly replaced agreeably to the statute of 1858; lastly, that the only remaining member of the said Board, namely, Mr. James Michie, withdrew from the said Church and joined the Presbyterian Church in Canada, and consequently has *ipso facto* lost his quality as a member of the said Board. That consequently all the said Respondents administer illegally the property of the said Presbyterian Church of Canada in connection with the Church of Scotland, and have no right to act as members of the Temporalities Board of the said Church.

The Petitioner concludes: 1st. That the Provincial Act, 38 Vic., ch. 64, amending the Act of Incorporation of the Temporalities Board of the said Presbyterian Church of Canada in connection with the Church of Scotland, he declared unconstitutional, as beyond the competency of the Legislature of Quebec. 2nd. That it be declared that the corporation Respondents have acted illegally and have exceeded their powers in allowing the Respondents to act as members of the said Board without their being elected in accordance with the law. 3rd. That it be declared that the Respondents have no right to act as members of the said Board, and that they be restrained from so doing. 4th. Lastly, that it be declared that the fund administered by the said corporation Respondents is in 40 itself only a trust for the benefit of the Presbyterian Church of Canada in connection with the Church of Scotland, and of the members and missionaries who have remained members of the said Church, and for no other purpose. That the Revds. John Cook, James C. Muir and George Bell have ceased to be members of the said Church, and consequently have no right to the benefits of the Temporalities Fund, and that the said John Fairlie, David W. Morrison and Charles A. Tanner are also without any rights therein.

Two of the Respondents, the Rev. Gavin Lang and Sir Hugh Allan declared that they did not contest this application and put themselves in the hands of the Court; the other Respondents have pleaded.

The Respondents who pleaded have declared, in substance, that the Church heretofore styled the Presbyterian Church of Canada in connection with the Church of Scotland has always been, from the time of its organization in this country, in 1831, a voluntary and independent association, and that the terms "in connection with the Church of Scotland," embraced in its name, have never been understood as expressing the idea of a right of jurisdiction or of control in any manner possessed by the Church of Scotland over the said Church. That, on the contrary, the independance of the said Presbyterian Church of Canada in connection with the Church of Scotland, and the absolute power of jurisdiction and of discipline of its Synod over the said Church and the congregations composing it, its ministers and members, have always been recognized by the Church of Scotland and affirmed in this country on different occasions, and notably by a solemn declaration made in 1844, and which thenceforth formed one of the fundamental principles of the constitution of the said Church, a principle to which each minister receiving ordination in the said Church was bound to give a formal adhesion, as the said Petitioner did on becoming a member of the said Church. That this supreme and independant power, possessed by the Synod of the said Church in all that concerned it, has always been acknowledged and accepted, and that in 1855, at the time of the commutation of the rights resulting from the "Clergy Reserves," the Government of Canada refused to consent to a settlement with the ministers thereof, individually, and only consented to make this arrangement through the Synod, acting by their representative commissioners for the general interests of the said Church; and that the fund derived from this commutation was subjected only to two conditions, as stated in the resolution of the Synod. 1. The primary claim of all the then ministers to an annual allowance of \$450 for life. 2. The next claim in favor of all ministers placed on the Synod's roll subsequent to the 9th of May 1853, date of the sanction of the Imperial Act authorizing the Provincial Legislature to manage the "Clergy Reserves." That the corporation thenceforth charged with the administration of this fund held it subject to the control of the Synod, and for the benefit of said Church governed by such authority.

That in 1875 the Synod of the said Church, after five years' deliberation, acting at all times in virtue of its supreme authority in whatever related to the said Church, resolved, almost unanimously, to unite the said Presbyterian Church of Canada in connection with the Church of Scotland, with the three other Churches afore-mentioned, these four Churches having the same faith, the same beliefs and the same doctrine, and that in so doing the said Synod had not renounced any of the principles, beliefs or doctrines of the said Church, but, on the contrary, it had preserved and maintained them intact, and that the said Church is at present in existence with the same doctrine, and for the same objects, the same organization, and also with the same rights, properties and estates under the name of the "Presbyterian Church in Canada," and that it maintains the same connection as heretofore with the Church of Scotland. That the Petitioner and the nine ministers, who continue with him outside the said union, have no right to pretend to continue the said Presbyterian Church of Canada in connec-

RECORD.

*In the
Court of
Queen's
Bench.*

No. 64A.
Remarks of
Mr. Justice
Jetté, on
rendering
the judg-
ment appeal-
ed from.

—continued.

RECORD. tion with the Church of Scotland, and that in fact they are dissentients, voluntarily separated from the said Church. That consequently they could not even have possessed the right to an allowance from the Temporalities Fund had it not been through the good-will of the Synod, which, by the legislation, sought and obtained from the Parliaments of Quebec and Ontario, preserved to them the maintenance of such privileges, notwithstanding their separation. Lastly, that the Acts passed to establish the union of the said Churches and for the modification of the statute incorporating the Temporalities Board of the said Church are valid, and, therefore, that the Petitioner is not justified in his complaint.

*In the
Court of
Queen's
Bench.*
No. 64A.
Remarks of
Mr. Justice
Jetté, on
rendering
the judgment
appealed from.
—continued.

As appears by the examination of these proceedings, the opposing parties 10 seem to agree on opening the door wider for the interference of the civil power in church matters. The answer to this plea is not of a nature to restrict the litigation to a strictly legal basis; as after having stated that the share of the clergy of the said Church in the proceeds of the "Clergy Reserves," was only so awarded because this clergy formed part of and belonged to the Established Church of Scotland, and that this "Temporalities Fund" had been constituted on the express condition that it should only be used for the purposes of the Presbyterian Church of Canada in connection with the Church of Scotland; the Petitioner adds that this Church is not identical with, but on the other hand, altogether distinct and different from the new Presbyterian Church in Canada, which is composed of 20 bodies or associations which have detached themselves in turn, either from the Church of Scotland or from the Presbyterian Church of Canada in connection with the Church of Scotland. Consequently the allegation of Respondents: that the said Presbyterian Church in Canada is the same as the Presbyterian Church of Canada in connection with the Church of Scotland, is unfounded. Lastly, the proof establishes and details, moreover, the reasons for this division between the Petitioner and his partisans on the one side, and the majority of the Synod on the other.

What is charged against the Respondents is: 1st. Their having, by this union of the said Churches, agreed to renounce the connection which the Presby- 30 terian Church of Canada had always carefully maintained with the Church of Scotland. 2nd. Their having agreed to declare by the articles of union signed by the said united Churches, that a belief in a portion of "The Westminster Confession of Faith" is not obligatory. It is unnecessary to say that those who have accepted the union repel these accusations. They maintain on the first point, that the connection of the said Church with that of Scotland has never implied any subordination whatever, but simply an interchange of good will which exists to an equal extent to-day between the Church of Scotland and the new organization. On the second point, they affirm that the declaration which they have signed does not imply any change of faith; that they have simply acknow- 40 ledged that the 23 cap. of the Confession of Faith cannot be interpreted as sanctioning principles opposed to liberty of conscience in matters of religion, and that such has always been the belief of the said Church prior to the union.

We have just reached the crowning point of the religious aspect of this case, and I have only sought thus to expose it by a gradual analysis of the pretensions of the parties, the better to demonstrate that there is not in reality at the bottom of this part of the dispute more than a question of appreciation of

religious doctrines, altogether beyond the jurisdiction of a civil tribunal, and consequently not for me to decide. I am, moreover, convinced that the pretensions of the parties, as they stand to-day before me, may be decided by resting scrupulously within the domain of law. I, therefore, make it my duty carefully to eliminate from this cause all that is not of a strictly judicial nature, and thus reducing this litigation to its true proportions I arrive at the examination of the only question on which my decision should be based.

By his conclusions, the Petitioner confines himself in reality to asking but two things: 1. That the Provincial Statute, 38 Victoria, chap. 64, be declared unconstitutional; from which would naturally flow the illegality of the present constitution of the "Temporalities Board," and the nullity of the acts done by the Respondents as members of that corporation. 2. That it be declared that the "Temporalities Fund" is the exclusive property of the Presbyterian Church of Canada in connection with the Church of Scotland, and subsidiarily that the Reverends John Cook, James C. Muir, George Bell, John Fairlie, David W. Morrison and Charles A. Tanner are no longer members of the said Church, and consequently have no rights to the benefits arising from this fund.

The Petitioner thus attacks directly, by his first pretension, the constitutionality of the Provincial Statute of Quebec, 38 Victoria, chap. 64, and by the second, indirectly, the constitutionality of the Statutes of Quebec and Ontario, as respects the union of the four Churches aforementioned (38 Victoria, chap. 62, Quebec, and 75 Ontario.) For if these two Legislatures have not exceeded their powers, in passing these laws, the Petitioner has not in the present law any remedy for redressing the grievances of which he complains.

It is much to be regretted that these important questions as to the constitutionality of the laws have not been intrusted by our new political constitution to a special tribunal, whose jurisdiction and authority in like matters would be unquestioned. The ordinary tribunals thus find themselves charged therewith unaided by any very precise rules to guide them, and it is necessary to seek elsewhere what our too short experience of a federal system does not enable us to find here. Although there exists a fundamental difference between the American Federal Constitution and that of the Canadian Provinces, since in the United States the Federal powers have been delegated by the States to the central government, whilst here it is rather the powers of the Provincial Legislatures which have been specially delegated, and consequently limited; nevertheless the principles accepted by the American jurisconsults and by the tribunals of the neighbouring republic on questions of the constitutionality of the laws appear to me to afford rules of indisputable wisdom for the decision of like difficulties. "It has been said by an eminent jurist, says Cooley (on Constitutional Limitations, p. 182.) that when Courts are called upon to pronounce the invalidity of an Act of legislation, passed with all the forms and ceremonies requisite to give it the force of law, they will approach the question with great caution, examine it in every possible aspect, and ponder upon it as long as deliberation and patient attention can throw any new light upon the subject, and never declare a statute void unless the nullity and invalidity of the Act are placed, in their judgment, beyond reasonable doubt. A reasonable doubt must be solved in favor of the legislative action, and the Act be sustained." And further he adds, citing the

RECORD.

*In the
Court of
Queen's
Bench.*

No. 64A.
Remarks of
Mr. Justice
Jetté, on
rendering
the judgment
appealed
from.
—continued.

RECORD. words of Chief-Justice Marshall: "It is not on slight implication and vague conjecture that the Legislature is to be pronounced to have transgressed its powers, and its Acts to be considered as void. The opposition between the Constitution and the law should be such that the Judge feels a clear and strong conviction of their incompatibility with each other." Judge Washington gives as a reason in favor of this rule, after having said that the question submitted to him afforded room for doubt: "But if I could rest my opinion in favor of the constitutionality of the law on which the question arises on no other ground than this doubt so felt and acknowledged, that alone would, in my estimation, be a satisfactory vindication of it. It is but a decent respect due to the wisdom, the integrity and the patriotism of the legislative body by which any law is passed to presume in favor of its validity until its violation of the constitution is proved beyond all reasonable doubt."

No. 64A.
Remarks of
Mr. Justice
Jetté, on
rendering
the judgment
appended
from.
—continued.

Such, in effect, is the fundamental rule which should guide a Judge in like cases. The presumption is always in favour of the constitutionality of the law. Let us examine at present, by the sight of these principles, the dispositions of our constitution relative to the powers of the Provincial Legislatures and the special statutes now under consideration, and see if there be even room for doubt as to the right or power of the Provincial Legislature to pass the laws in question. The 91st section of the British North America Act, 1867, 20 declaring the powers of the Federal Parliament, says: "It shall be lawful for the Queen, by and with the advice and consent of the Senate, and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.".....This section then enumerates a general list of subjects, exclusively entrusted to the Federal Parliament, but declaring that this enumeration is not limitative, except as to the subjects exclusively entrusted to the Local Legislatures. The 92nd section regulates and determines the exclusive powers of the Provincial Legislatures, and declares: "Section 92. "In each Province the Legislature may exclusively 30 "make laws in relation to matters coming within the classes of subjects next "hereinafter enumerated; that is to say: 11th. The incorporation of companies "with Provincial objects. 13th. Property and civil rights in the Province."

Property and civil rights are thus, in virtue of this disposition of our present constitution, submitted to the exclusive control of the Provincial Legislatures. Now, what was the object of the corporation created by the Statute 22 Victoria, cap. 66? Nothing else than the ownership and the possession of certain property; that is to say, that the Legislature of United Canada has accorded, by this Act, those rights which are included specially in the category of subjects exclusively entrusted at the present time to the Provincial Legislatures. It is true that under 40 the former régime the two Provinces being subject to a Legislative union, these same rights were under the control of the Legislature of the Union, and consequently the privileges accorded in this respect to corporations created by this Parliament extended (except when specially restricted) to all the territory subject to its jurisdiction. But the extent of this territory, whether more or less, does not change anything in the nature itself of these rights; and since these rights are now entrusted to the Provincial Parliament, can it be pretended that

- it has neither the right nor the power to legislate in a manner to affect them? Certainly not. The change in our political system cannot have had the effect of rendering perpetual what has been done in the past! It is to be assumed rather that property and civil rights then already in existence, and having been established in the past, as well as property and civil rights to be established for the future, are made subject to the jurisdiction of the Provincial Legislatures. It must be admitted, therefore, that the changes which the Parliament of United Canada could have made, and no one will deny that it had the absolute right to make, in the Act of Incorporation of the "Temporalities Fund,"
- 10 the Legislature of the Province of Quebec can make with the same authority and the same effect within the limit of the territory attributed to its jurisdiction. But, says the Petitioner, it is exactly this restriction as to territory which saves my rights; not having a domicile in this Province, I am not subject to the control of this Legislature, and therefore my rights cannot be affected by this legislation. This objection is not serious. The constitution, in subjecting property and civil rights to the control of the Provincial Legislatures, did not make and could not make a distinction between the possessors of these rights; it has not limited the legislative authority to the case where the property belonged to a resident only! No, all rights of property, whether possessed by a resident or a
- 20 non-resident, are under the authority of the legislative power of the Province. Any other interpretation of our constitution would be contrary to the best established principles of the civil law and of the public law. Therefore, either the rights which the Petitioner claims exist in this Province or they do not. If they do not, what can he seek from this Court? If they do, they only exist as recognized by the laws passed or maintained by our Legislature. Now, I find that this Legislature has changed the disposition of the property, from whence flow the rights of the Petitioner, in two important respects: 1st, as to the administration; 2nd, as to the final disposition of the fund constituting this property. Firstly, as to the administration, the Statute 38 Victoria, cap. 64, of which the
- 30 annulling is sought, completely justifies the action of the corporation, Respondents, and of the members composing it. Secondly, as to the final disposition of the Temporalities Fund, the Statute 38 Victoria, cap. 62, which is not attacked, while securing to the present ministers their annual incomes intact, transfers finally the property of this fund to the United Church under the name of the Presbyterian Church in Canada.
- Now, it appears to me incontestable, according to the provisions of our Constitutional Act, that these two Acts, in so far as they affect civil rights and rights of property (and there are none other in question before this Court), were within the authority and jurisdiction of our Provincial Legislature, and therefore that
- 40 they irrevocably settle the rights of the parties. In the face of this legislation, it is impossible for me to declare that the Respondents have acted illegally and without right in the administration of the fund entrusted to them; that these same Respondents are not legally members of the said corporation, Respondents, and that the "Temporalities Fund" does not belong to the Church, to which the law attributes it, and that it cannot be applied in the manner provided by that law.

And if the Petitioner seeks to complain of the arbitrariness and injustice of

RECORD.

*In the
Court of
Queen's
Bench.*

No. 64A.
Remarks of
Mr. Justice
Jetté, on
rendering
the judg-
ment appeal-
ed from.

—continued.

RECORD. these legislative enactments which deprive him of rights of property which he considered inviolable, I must answer that it is not my mission to accord to him a protection which the law refuses, and that nothing would be more dangerous than for the Courts to assume the power of rejecting a positive law under the pretext that it was unjust. "There would be (says Cooley, page 167,) very great probability of unpleasant and dangerous conflict of authorities if the Courts were to deny validity to legislative action on subjects within their control, on the assumption that the Legislature had disregarded justice or sound policy. The moment a Court ventures to substitute its own judgment for that of the Legislature in any case where the Constitution has vested the Legislature with power over the subject, that moment it enters upon a field where it is impossible to set limits to its authority, and where its discretion alone will measure the extent of its interference. The rule of law upon this subject appears to be that, except where the Constitution has imposed limits upon the legislative power, it must be considered as practically absolute, whether it operate according to natural justice or not in any particular case. The Courts are not the guardians of the rights of the people, except as those rights are secured by some constitutional provision which comes within the judicial cognizance. The protection against unwise or oppressive legislation within constitutional bounds, is by an appeal to the justice and patriotism of the representatives of the people. 10
If this fail, the people in their sovereign capacity can correct the evil, but Courts cannot assume their rights. The judiciary can only arrest the execution of a statute when it conflicts with the constitution. It cannot run a race of opinions upon points of right, reason and expediency with the law-making power. Any Legislative Act which does not encroach upon the power apportioned to the other departments of the Government being *prima facie* valid, must be enforced, unless restrictions upon the legislative authority can be pointed out in the constitution and the case shown to come within them." 20

The writ of injunction issued in this cause must, therefore, be set aside, and the Petitioner's demand rejected with costs. 30

Appendix to
Appellant's
Case.

APPENDIX.

Petition. (Already printed.) See page 16.
Affidavits in support of Petition. (Already printed.) See page 39.
Answers to Pleas. (Already printed.) See page 140.
Deposition of Rev. Gavin Lang. (Already printed.) See page 147.
Admission of Parties. (Already printed.) See page 154.
Deposition of Douglas Brymner. (Already printed.) See page 184.
Deposition of Rev. Gavin Lang. (Already printed.) See page 225.
Deposition of Sir Hugh Allan. (Already printed.) See page 227.
Deposition of James Croil. (Already printed.) See page 229. 40

(Endorsed.)

Appellant's Factum and Appendix—Filed 16th March, 1880.

(Paraphed) L. W. M.

DOCUMENT IX.

Canada,
Province of Quebec, }
District of Montreal. }

Court of Queen's Bench,
Appeal Side.

RECORD.

In the
Court of
Queen's
Bench.

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.

The Reverend Robert Dobie, (Petitioner in the Court
below) - - - - - Appellant.
and

The Board for the Management of the Temporalities
Fund of the Presbyterian Church of Canada in
connection with the Church of Scotland," *et al.*,
(Respondents in the Court below,) - - - Respondents.

RESPONDENTS' FACTUM.

Proceedings in this case commenced by an *ex parte* injunction, obtained by the Petitioner on the 31st day of December, 1878, from the Honorable Mr. Justice Jetté, in Chambers, whereby the Respondents were enjoined, pending such further order and judgment as might be rendered, "to suspend any and all acts and proceedings in their several capacities, respectively, in respect of the payment of all sums of money, and of the administration of the funds under the control of the said corporation, Respondents, and in respect of all other matters 20 "in dispute in this cause."

The Respondents were the above-mentioned "Board" and the eleven members thereof.

The Petitioner in his petition set forth :

1st. The names and capacities of the Respondents.

2nd. His own qualities and capacities.

These he alleged to be :

1st. That he was a minister of the "Presbyterian Church of Canada in connection with the Church of Scotland" and a member of its Synod.

2nd. That he was minister of the church and congregation designated "St. Andrew's Church," in Milton, in the Province of Ontario, in connection with the above-mentioned Church.

3rd. That he was a member and minister of the Church of Scotland (in Scotland) having come to this country in 1852 as an ordained missionary of the Church of Scotland.

4th. That since the year 1853 he had been a minister of the "Presbyterian Church of Canada in connection with the Church of Scotland," and a Protestant clergyman and in receipt of a stipend of upwards of £100 0 0 per annum from said fund.

In his Petition he also attempts to shew the origin of the "Temporalities Fund," from which the above annual stipend is derived, alleging that by the authority of Imperial and Canadian Acts, certain lands were set apart "for the support of a Protestant Clergy."

That finally the Petitioner and other ministers of the "Presbyterian Church of Canada in connection with the Church of Scotland," through its Synod, commuted their claims against the proceeds of the "Clergy Reserves" with the Gov-

RECORD. ernment, the result being that £127,000 was handed over by the Government to the Synod in the year 1855.

*In the
Court of
Queen's
Bench.*

No. 85.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

That previous to the commutation the annual value of Petitioner's claim was £150.

That the Synod passed resolutions in 1855 by which they agreed that the Fund should be held for the benefit of the Church, and that an act of incorporation should be obtained for the management of the Fund, and by which resolutions the Synod agreed to guarantee during life £112 10s. each, to all of the commuting ministers in connection with the Church, and that it should not be competent for the Synod to alter this disposition of the interest without the consent of the 10 ministers who commuted their claims.

The Appellant then alleges the obtaining by the Synod of the Act of the late Parliament of Canada (22 Vic., cap. 66) to incorporate the Board for the management of the Fund.

Next he sets up the Act of the Legislature of the Province of Quebec (32 Vic., cap. 64,) assented to on the 23rd February, 1875, amending the above Act 22 Vic., cap. 66, and alleges that the same is illegal and unconstitutional, and complains of the Board, Respondents, for acting under its provisions.

Then he alleges that the Rev. John Cook, D.D., the Rev. James C. Muir, D.D., and the Rev. George Bell, D.D., were amongst the original commuting 20 ministers who commuted their claims upon the proceeds of the Clergy Reserves, but that on the 15th of June, 1875, they joined the "Presbyterian Church in Canada," and thereby ceased to be ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and to have any claims upon the Fund.

Appellant's next allegation is that the Board, Respondents, have since 15th of June, 1875, illegally paid to the Rev. John Fairlie, the Rev. W. Morison and the Rev. Charles A. Tanner, certain sums from the said Fund, and that they also belong to the "Presbyterian Church in Canada," and have no claims upon the Fund. 30

Appellant's conclusions commenced as follows:—

"Wherefore the said Petitioner, *personally and in his said qualities*, prays that a writ of injunction may be issued against the said corporation, and against the said Rev. John Jenkins, Rev. Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Rev. John Cook, Rev. Daniel M. Gordon, Sir Hugh Allan, John L. Morris, Esquire, Rev. John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, esquire, enjoining them and each of them to appear before this Honorable Court or a Judge thereof, to answer the present petition."

The Petitioner then proceeds to ask that the Act of the Legislature of the 40 Province of Quebec, intituled "An Act to amend the Act intituled 'An Act to incorporate the Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland,'" 38 Vic., chap. 64, may be declared to be unconstitutional and rescinded.

That the above-named individual Respondents be restrained from acting as members of the Board upon the ground that they have been illegally elected.

That it be adjudged and declared that the said Fund is a fund held in trust

by Respondents for the benefit of the Presbyterian Church of Canada in connection with the Church of Scotland, and for the benefit of the ministers and missionaries who retain their connection therewith, and who have not ceased to be ministers thereof, and for no other purpose whatever.

That it be held that the said Reverend John Cook, Reverend James C. Muir and Reverend George Bell be declared to have ceased to be members of the Presbyterian Church of Canada in connection with the Church of Scotland, and not entitled to any sum of money or benefit from the funds administered by Respondents.

- 10 That the said Reverend John Fairlie, Reverend W. Morison and Reverend Charles A. Tanner be declared not entitled to receive any sum of money whatever from said Fund.

That the Respondents be ordered not to pay to the above-named or to any person whomsoever any sum of money whatever out of the capital or interest of said Fund until further ordered.

- The Respondents (with the exception of Rev. G. Lang and Sir Hugh Allan, who declared that they did not contest the petition and put themselves in the hands of the Court,) pleaded in effect that the Church heretofore styled the Presbyterian Church of Canada in connection with the Church of Scotland, has always been, from the time of its organisation in this country, in 1831, a voluntary and independent association, and that the terms "in connection with the Church of Scotland" embraced in its name have never been understood as expressing the idea of a right of jurisdiction or of control in any manner possessed by the Church of Scotland over the said Church. That, on the contrary, the independence of the said Presbyterian Church of Canada in connection with the Church of Scotland, and the absolute power of jurisdiction and of discipline of its Synod over the said Church and the congregations composing it, its ministers and members, have always been recognized by the Church of Scotland, and affirmed in this country on different occasions, and notably by a solemn declaration made in 1844, and which thenceforward, formed one of the fundamental principles of the constitution of the said Church, a principle to which each minister receiving ordination in the said Church was bound to give a formal adhesion, as the said Petitioner did on becoming a member of the said Church. That this supreme and independent power, possessed by the Synod of the said Church in all that concerned it, has always been acknowledged and accepted, and that in 1855, at the time of the commutation of the rights resulting from the "Clergy Reserves," the Government of Canada refused to consent to a settlement with the ministers thereof, individually, and only consented to make this arrangement through the Synod, acting by their representative commissioners for the general interests of the said Church; and that the fund derived from this commutation was subjected only to two conditions, as stated in the resolution of the Synod. 1. The primary claim of all the then ministers to an annual allowance of \$450 for life. 2. The next claim in favor of all ministers placed on the Synod roll subsequent to the 9th of May 1853, date of the sanction of the Imperial Act authorizing the Provincial Legislature to manage the "Clergy Reserves." That the corporation thenceforth charged with the administration of this fund held it subject to the control of the Synod, and for the benefit of said Church governed by such authority. That in

RECORD.

*In the
Court of
Queen's
Bench.*

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

RECORD. 1875 the Synod of the said Church, after five years' deliberation, acting at all times in virtue of its supreme authority in whatever related to the said Church, resolved, almost unanimously, to unite said Presbyterian Church of Canada in connection with the Church of Scotland, with the three other Churches afore-mentioned, these four Churches having the same faith, the same beliefs and the same doctrine, and that the said Synod had not renounced to any of the principles, beliefs or doctrines of the said Church, but, on the contrary, it had preserved and maintained them intact, and that the said Church is at present in existence with the same doctrine, and for the same objects, the same organization, and also with the same rights, properties and estates under 10 the name of the "Presbyterian Church in Canada," and that it maintains the same connection as heretofore with the Church of Scotland. That the Petitioner and the seven ministers, who continue with him outside the said union, have no right to pretend to continue the said Presbyterian Church of Canada in connection with the Church of Scotland, and that in fact they are dissentients, voluntarily separated from the said Church. That consequently they could not even have possessed the right to an allowance from the Temporalities Fund had it not been through the good-will of the Synod, which, by the legislation, sought and obtained from the Parliaments of Quebec and Ontario, preserved to them the maintenance of such privileges, notwithstanding their separation. Lastly, that 20 the Acts referring to the union of the said Churches and for the modification of the statute incorporating the Temporalities Board of the said Church are valid, and, therefore, that the Petitioner is not justified in his complaint.

The Petitioner in answer to Respondents' plea, after having stated that the share of the Clergy of the said Church in the proceeds of the "Clergy Reserves," was only so awarded because this Clergy formed part of and belonged to the Established Church of Scotland, and that this "Temporalities Fund" had been constituted on the express condition that it should only be used for the purposes of the Presbyterian Church of Canada in connection with the Church of Scotland; adds that this Church is not identical with, but on the other hand, altogether 30 distinct and different from the new Presbyterian Church in Canada, which is composed of bodies or associations which have detached themselves in turn, either from the Church of Scotland or from the Presbyterian Church of Canada in connection with the Church of Scotland, and that the allegation of Respondents: that the said Presbyterian Church in Canada is the same as the Presbyterian Church of Canada in connection with the Church of Scotland, is unfounded.

The Respondents in presenting their case to this Court submit:

1st. That this litigation has grown out of the Union of Presbyterian Churches which took place on the 15th of June, 1875.

Then "The Presbyterian Church of Canada in connection with the Church 40 of Scotland," "The Canada Presbyterian Church," "The Church of the Maritime Provinces in connection with the Church of Scotland," and "The Presbyterian Church of the Lower Provinces," united to form "The Presbyterian Church in Canada."

This union was regularly consummated and authorised by the vote of the Synod or Supreme Court or governing body of "the Presbyterian Church of Canada in connection with the Church of Scotland." The Petitioner and (seven)

*In the
Court of
Queen's
Bench.*
No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

others dissented, but the Act of Union was the Act of their Church, notwithstanding their dissent which did not prevent the Union from being consummated.

All this is carefully concealed and suppressed in the Petitioner's petition. He says not one word about the union, but craftily selecting a few individuals pretends that they have left their Church, and that the Respondents are illegally paying money to them.

No one ignorant of the facts, upon reading Appellant's petition, would suppose that the true state of the case was that the Church of which Petitioner was a member, had formed a union with three other bodies of Christians having the same doctrines and standards and forms of Church Government, for the better promotion of their common objects, and that the Petitioner and (seven) other ministers were seceders of it. On the contrary, any one on reading the petition would suppose that the Church was represented by the Petitioner, and that the Respondents were acting in collusion with a few to whom they were illegally handing over the funds. The Respondents therefore charge the Petitioner with having suppressed the truth and with not having stated the facts of the case.

The Respondents now submit that their case may be introduced in the following leading propositions from which discussion will flow.

1st. The Act of the Legislature of Quebec, which is impugned by Petitioner, is legal and constitutional, and if that be held, the Petitioner's action must be dismissed.

2nd. The union was legally consummated, and if that be conceded, the Presbyterian Church of Canada in connection with the Church of Scotland, of which Petitioner was a member, and which owned the "Temporalties Fund" (of which the Rev. G. Lang, Sir Hugh Allan, and a few others acting in collusion with him, seek to possess themselves), did not lose their right to said fund by taking part in the union, and required no sanction of Acts of Parliament to retain their property.

1st. As to the constitutionality of the Acts:

It is admitted by the Petitioner, in the admissions filed, that *the domicile and chief place of business of Board Respondents is, and always was, at Montreal.*

It is proved that the whole of the funds of the Respondents are and have been for a great many years invested in Montreal.

All of the claimants upon the fund live either in the Province of Quebec or Ontario.

This being so, it seems clear that the Legislature of this Province had jurisdiction. The British North America Act, 30 and 31 Vic., cap. 3, provides that amongst the classes of subjects which in each Province the Legislature may exclusively make laws in relation to, are, see sec. 92, sub. sec. 13, "Property and Civil Rights in the Province."

The property in question being in the Province, the Legislature had jurisdiction.

The Petitioner, therefore, cannot successfully contend that he is not bound by the law.

If he attempts to say that his civil rights are affected, then he is doubly bound by the Ontario Act, 38 Vic., c. 75, which contains provisions identical with those passed in Quebec.

RECORD.

In the
Court of
Queen's
Bench.

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.

—continued.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 65.
Resecondents
Case, filed
24th Feb-
ruary 1880.
—continued.

Under the above cited section 92, s.s. 13, of the Brit. N. A. Act, the Local Legislature could legislate in relation to "Civil Rights in the Province."

Petitioner claims that his civil rights are affected. But he is a resident of Ontario, and therefore is bound by the Ontario Act, and his civil rights are regulated by it. Besides, his civil rights instead of being taken away are expressly preserved and continued to him by the Quebec Acts.

Further, the Synod of the Church, including the Petitioner, as is proved, have acknowledged the jurisdiction of the Quebec Legislature over the property of the Board by obtaining, in 1869, from the Quebec Legislature an amendment to the Temporalities Act.

10

It is proved that the Petitioner agreed to this. So the jurisdiction of the Quebec Legislature over the fund has been acknowledged by the Petitioner.

Further, the Petitioner has acquiesced in the Act of the Quebec Legislature, which he now calls in question, by accepting from the Respondents' Board as constituted by said Quebec Act, his half-yearly stipends, without protest, as is proved. See deposition of Mr. Jas. Croil for Petitioner.

The learned Judge who rendered the judgment in the Court below, thus ably puts the case :

"Although there exists a fundamental difference between the American Federal Constitution and that of the Canadian Provinces, since in the United States the Federal powers have been delegated by the States to the central government, whilst here it is rather the powers of the Provincial Legislatures which have been specially delegated, and consequently limited; nevertheless the principles accepted by the American jurisconsults and by the tribunals of the neighbouring republic on questions of the constitutionality of the laws appear to me to afford rules of indisputable wisdom for the decision of like difficulties. "It has been said by an eminent jurist, says Cooley (on Constitutional Limitations, p. 182.) that when Courts are called upon to pronounce the invalidity of an Act of legislation, passed with all the forms and ceremonies requisite to give it the force of law, they will approach the question with great caution, examine it in every possible aspect, and ponder upon it as long as deliberation and patient attention can throw any new light upon the subject, and never declare a statute void unless the nullity and invalidity of the Act are placed, in their judgment, beyond reasonable doubt. A reasonable doubt must be solved in favor of the legislative action, and the Act be sustained." And further he adds, citing the words of Chief-Justice Marshall: "It is not on slight implication and vague conjecture that the Legislature is to be pronounced to have transcended its powers, and its Acts to be considered as void. The opposition between the Constitution and the law should be such that the Judge feels a clear and strong conviction of their incompatibility with each other." Judge Washington gives as a reason in favour of this rule, after having said that the question submitted to him afforded room for doubt: "But if I could rest my opinion in favor of the constitutionality of the law on which the question arises on no other ground than this doubt so felt and acknowledged, that alone would, in my estimation, be a satisfactory vindication of it. It is but a decent respect due to the wisdom, the integrity and the patriotism of the legislative body by which any law is passed to presume in favor of its validity until its violation of the constitution is proved beyond all reasonable doubt."

- Such, in effect, is the fundamental rule which should guide a Judge in like cases. The presumption is always in favour of the constitutionality of the law. Let us examine at present, by the light of these principles, the dispositions of our constitution relative to the powers of the Provincial Legislatures and the special statutes now under consideration, and see if there be even room for doubt as to the right or power of the Provincial Legislature to pass the laws in question. The 91st section of the British North America Act, 1867, declaring the powers of the Federal Parliament, says: "It shall be lawful for the Queen, by and with the advice and consent of the Senate, and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.".....This section then enumerates a general list of subjects, exclusively entrusted to the Federal Parliament, but declaring that this enumeration is not limitative, except as to the subjects exclusively entrusted to the Local Legislatures. The 92nd section regulates and determines the exclusive powers of the Provincial Legislatures, and declares: "Section 92. "In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say: 11th. The incorporation of companies with Provincial objects. 13th. Property and civil rights in the Province."

- Property and civil rights are thus, in virtue of this disposition of our present constitution, submitted to the exclusive control of the Provincial Legislatures. Now, what was the object of the corporation created by the Statute 22 Victoria, cap. 66? Nothing else than the ownership and the possession of certain property; that is to say, that the Legislature of United Canada has accorded, by this Act, those rights which are included specially in the category of subjects exclusively entrusted at the present time to the Provincial Legislatures. It is true that under the former régime the two Provinces being subject to a Legislative union, these same rights were under the control of the Legislature of the Union, and consequently the privileges accorded in this respect to corporations created by this Parliament extended (except when specially restricted) to all the territory subject to its jurisdiction. But the extent of this territory, whether more or less, does not change anything in the nature itself of these rights; and since these rights are now entrusted to the Provincial Parliament, can it be pretended that it has neither the right nor the power to legislate in a manner to affect them? Certainly not. The change in our political system cannot have had the effect of rendering perpetual what has been done in the past! It is to be assumed rather that property and civil rights then already in existence, and having been established in the past, as well as property and civil rights to be established for the future, are made subject to the jurisdiction of the Provincial Legislatures. It must be admitted, therefore, that the changes which the Parliament of United Canada could have made, and no one will deny that it had the absolute right to make, in the Act of Incorporation of the "Temporalities Fund," the Parliament of the Province of Quebec can make with the same authority and the same effect within the limits of the territory attributed to its jurisdiction. But, says the Petitioner, it is exactly this restriction as to territory which saves my rights; not having a domicile in this Province, I am not subject to the con-

RECORD.

—
In the
Court of
Queen's
Bench.
—

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

trol of this Parliament, and therefore my rights cannot be affected by this legislation. This objection is not serious. The constitution, in subjecting property and civil rights to the control of the Provincial Legislatures, did not make and could not make a distinction between the possessors of these rights; it has not limited the legislative authority to the case where the property belonged to a resident only! No, all rights of property, whether possessed by a resident or a non-resident, are under the authority of the legislative power of the Province. Any other interpretation of our constitution would be contrary to the best established principles of the civil law and of the public law. Therefore, either the rights which the Petitioner claims exist in this Province or they do not. If they 10 do not, what can he seek from this Court? If they do, they only exist as recognized by the laws passed or maintained by our Legislature. Now, I find that this Legislature has changed the disposition of the property, from whence flow the rights of the Petitioner, in two important respects: 1st, as to the administration; 2nd, as to the final disposition of the fund constituting this property. Firstly, as to the administration, the Statute 38 Victoria, cap. 64, of which the annulling is sought, completely justifies the action of the corporation, Respondents, and of the members composing it. Secondly, as to the final disposition of the Temporalities Fund, the Statute 38 Victoria, cap. 62, which is not attacked, while securing to the present ministers their annual incomes intact, transfers 20 finally the property of this fund to the United Church under the name of the Presbyterian Church in Canada.

Now, it appears to me incontestable, according to the provisions of our Constitutional Act, that these two Acts, in so far as they affect civil rights and rights of property (and there are none other in question before this Court), were within the authority and jurisdiction of our Provincial Legislature, and therefore that they irrevocably settle the rights of the parties. In the face of this legislation, it is impossible for me to declare that the Respondents have acted illegally and without right in the administration of the fund entrusted to them; that these same Respondents are not legally members of the said corporation, Respondents, 30 and that the "Temporalities Fund" does not belong to the Church, to which the law attributes it, and that it cannot be applied in the manner provided by that law.

And if the Petitioner seeks to complain of the arbitrariness and injustice of these legislative enactments which deprive him of rights of property which he considered inviolable, I must answer that it is not my mission to accord to him a protection which the law refuses, and that nothing would be more dangerous than for the Courts to assume the power of rejecting a positive law under the pretext that it was unjust. "There would be (says Cooley, page 167,) very 40
"great probability of unpleasant and dangerous conflict of authorities if the
"Courts were to deny validity to legislative action on subjects within their con-
"trol, on the assumption that the Legislature had disregarded justice or sound
"policy. The moment a Court ventures to substitute its own judgment for that
"of the Legislature in any case where the Constitution has vested the Legisla-
"ture with power over the subject, that moment it enters upon a field where it
"is impossible to set limits to its authority, and where its discretion alone will
"measure the extent of its interference. The rule of law upon this subject ap-

"pears to be that, except where the Constitution has imposed limits upon the legislative power, it must be considered as practically absolute whether it operates according to natural justice or not in any particular case. The Courts are not the guardians of the rights of the people, except as those rights are secured by some constitutional provision which comes within the judicial cognizance. The protection against unwise or oppressive legislation within constitutional bounds, is by an appeal to the justice and patriotism of the representatives of the people. If this fail, the people in their sovereign capacity can correct the evil, but Courts cannot assume their rights. The judiciary can only arrest the execution of a statute when it conflicts with the constitution. It cannot run a race of opinions upon points of right, reason and expediency with the law-making power. Any Legislative Act which does not encroach upon the power apportioned to the other departments of the Government being *prima facie* valid, must be enforced, unless restrictions upon the legislative authority can be pointed out in the constitution and the case shown to come within them."

The writ of injunction issued in this cause must, therefore, be set aside, and the Petitioner's demand rejected with costs.

Before leaving this branch of the case the Respondents desire to cite the elaborate and learned judgment of His Honor Vice-Chancellor Blake, rendered in Ontario in the case of Cowan and Wright, 23 Grants Chancery Reports, p. 616, wherein he maintained the constitutionality of the Ontario Act, 38 Vic, c. 75, which contains provisions identical with those in the Act impugned in this case by Petitioner.

2nd Proposition. The Church did a lawful act in consummating the union and therefore retained their property, including this Fund, without requiring the sanction of an Act of Parliament.

This opens the door to the discussion of the ecclesiastical view of the question.

The Petitioner's counsel have asserted that the Presbyterian Church of Canada in connection with the Church of Scotland, was identical with the Church of Scotland in Scotland, which is an Established or State Church, and that the Church here only got a share of the Fund because she was really the Church of Scotland in Canada.

Now, it is well known and the evidence shews that the Church of Scotland has its bounds in Scotland.

The Church here was an independent voluntary association from the outset.

It was formed at a convention of ministers and commissioners as appears from the minutes of its Synod, being filed as Respondents' Exhibit 3.3, page 3 and pp. 13 and 14, at the suggestion of a dispatch, dated the 1st of August, 1830, from the Secretary of State for the Colonies, Sir George Murray to Sir John Colborne, Lieutenant-Governor of Upper Canada. That dispatch suggested on the part of the Imperial Government the desirableness of the union of the whole of the Presbyterian Clergy of the Province, with a view to facilitate the disbursements of the money derivable from the Clergy Reserves.

This Church "The Presbyterian Church of Canada in connection with the Church of Scotland," was formed altogether independently of any authority over or of any knowledge by the Church of Scotland in Scotland." See deposition of Dr. Jenkins, p. 46, Respondents' Appendix, l. 38.

RECORD.

In the
Court of
Queen's
Bench.

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

Deposition of Professor Mackerras, p. 8, Respondents' Appendix, l. 10 to 28.

Deposition of Rev. R. Campbell, p. 92 of Respondents' Appendix, l. 29 to end, and page 93, l. 42, and pp. 94 and 95. Professor Mackerras, page 23 of Respondents' Appendix, l. 20 to 36.

The Church of Scotland itself from the beginning recognized this independence of the Canadian Church, as appears by a letter from its Colonial Committee in the minutes of 1844, p. 9, Respondents' Exhibit 3,3, wherein it is stated that "The Church of Scotland has never claimed any authority nor exercised any control over your Synod; neither has she ever possessed or desired to possess the right of any such interference. Her efforts have been limited to the cultivation of 10 brotherly affection and the rendering of pecuniary aid to those who had many claims on her regard." See deposition of Prof. Mackerras, Respondents' Appendix, p. 10, l. 33.

Deposition, Rev. R. Campbell, Respondents' Appendix, pp. 94, 95 and 96.

In 1844 the Synod of the Canadian Church passed, without a dissenting voice, the following Act *which was made a fundamental and essential part of its constitution, and to which every minister had to assent as did the Petitioner, the Rev. R. Dobie.*

"Whereas, this Synod has always, from its first establishment, possessed a perfectly free and supreme jurisdiction over all the congregations and ministers 20 in connection therewith; and although the independence and freedom of this Synod, in regard to all things spiritual, cannot be called in question, but has been repeatedly, and in most explicit terms affirmed, not only by itself, but by the General Assembly of the Church of Scotland, yet, as in present circumstances it is expedient that this independence be asserted and declared by a special Act:

"It is hereby declared, That this Synod has always claimed and possessed, does now possess and ought always, in all time coming, to have and exercise a perfectly free, full, final, supreme and uncontrolled power of jurisdiction, discipline and government, in regard to all matters, ecclesiastical and spiritual, over all the ministers, elders, church members and congregations under its care, without the 30 right of review, appeal, complaint or reference, by or to any other court or courts whatsoever, in any form or under any pretence; and that in all cases that may come before it for judgment, the decisions and deliverances of this Synod shall be final. And the Synod further declares, that if any encroachment on this supreme power and authority shall be attempted or threatened, by any person or persons, court or courts whatsoever, then the Synod, and each and every member thereof, shall to the utmost of their power, resist and oppose the same. And whereas the words in the designation of the Synod "in connection with the Church of Scotland," have been misunderstood or misrepresented by many persons, it is hereby declared, that the said words imply no right of jurisdiction or 40 control, in any form whatsoever, by the Church of Scotland over the Synod, but denote merely the connection of origin, identity of standards and ministerial and Church communion. And it is further enacted that this supreme and free jurisdiction is a fundamental and essential part of the constitution of the Synod; and that this may be fully known to all those who may hereafter seek admission into our Church, it is enjoined that all Presbyteries shall preserve a copy of this Act, and cause it to be read over to, and assented by every minister and probationer

who may apply for ordination or induction into any pastoral charge." See Respondents' Exhibit 3³, p. 15; also deposition of Rev. R. Campbell, Respondents' Appendix, p. 95, l. 30. Rev. Prof. Mackerras, p. 9, l. 39 and p. 10.

The Rev. R. Dobie, the Petitioner, assented to this declaration of independence.

Evidence of Prof. Mackerras, p. 23, Respondents' Appendix, l. 5 to 12.

Respondents' Exhibit 3¹ filed with admissions, being an extract from Minutes of Presbytery of Glengarry, proves this.

Evidence of Rev. R. Campbell, Respondents' Appendix, p. 97, l. 10.

10 Latterly, pending union negotiations, the Church of Scotland continued to recognize the independence of the Canadian Church, and declared that it claimed no title to review, although it approved of the basis of union.

Evidence of Rev. Dr. Jenkins, p. 47, Respondents' Appendix, l. 15 to 40, and p. 48.

"Q. You say that the attitude of the Church of Scotland has not changed since the said union; will you mention your reasons for so saying and give instances?"

"A. My reasons for saying so are these: the Church of Scotland, as before the union, has continued to aid the Presbyterian Church in Canada by donations from her funds; that she has received ministers of the Presbyterian Church in Canada into her parishes and courts in Scotland on the same terms which were in force before the union. In regard to donations, I instance Queen's College, which still receives an annual grant from the Church of Scotland. I also instance moneys contributed by the Church of Scotland to the French Evangelization Society of the Presbyterian Church in Canada, and to the Home Mission of the Presbyterian Church in Canada. As to ministerial communion, I instance the case of the Rev. Wm. M. Black, a minister of the Presbyterian Church in Canada who took with him a Presbyterial certificate to Scotland, from the Presbytery of Montreal in connection with the Presbyterian Church in Canada, which certificate was received by the Presbytery of Kirkeudbright, and on which certificate he was received into the Presbytery and inducted into the parish of Anwoth, having, before connecting himself with the Presbyterian Church in Canada, been ordained by a Presbytery of the Church of Scotland in Scotland. I instance the case of the Rev. Principal Snodgrass, D.D., whose position in this country was similar to that of the Rev. Mr. Black, and who was received on his Presbyterial certificate from the Presbytery of Kingston by the Presbytery of Langholm, in Scotland, in the Synod of Dumfries, Scotland, and thereafter inducted as minister into the parish of Canonbie in said Presbytery.

Q. Can you state what has been the attitude of the Church of Scotland, in Scotland, towards the union of the Presbyterian bodies which is in question in this case?

A. In eighteen hundred and seventy-one I was appointed by the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, a deputation to the General Assembly of the Church of Scotland upon the following resolution passed on Wednesday, the fourteenth day of June, eighteen hundred and seventy-one, by the Synod, as appears at page 36 Synod minutes: "Whereas, "this Church has ever cherished and does still cherish devoted attachment to the

RECORD.

In the
Court of
Queen's
Bench.

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

"Church of Scotland; and, whereas, it would at any time be proper to convey by
"deputation to the Mother Church an expression of our filial affection and pro-
"found esteem, but in the prospect of a union of all the Presbyterian Churches
"throughout the Dominion of Canada, it is especially becoming us to express our
"devotion and our desire for her continued sympathy, be it resolved that this
"Synod appoint, and they do hereby appoint, John Cook, D.D., Wm. Snodgrass,
"D.D., John Jenkins, D.D., and James Croil, Agent of the Church, such deputa-
"tion, with instructions to appear before the Venerable the General Assembly of
"the Church of Scotland at its next annual meeting, to assure the Assembly of
"the undiminished attachment of this Synod to the Parent Church, and to com- 10
"municate to the Assembly full information regarding the position of this Church,
"and especially as to the reasons which weigh with this Synod in their attempt
"to advance the interests of Presbyterianism in this part of the Empire by the
"consolidation of the several branches of the Presbyterian Church under the
"jurisdiction of one General Assembly." This resolution was unanimously
adopted by the Synod. I did appear before the General Assembly of the Church
of Scotland at its meeting in May, eighteen hundred and seventy-two, and fur-
nished the General Assembly to the best of my ability with all the information
that I possessed respecting negotiations for union in so far as they had proceeded.
Whereupon, after kindly expressions from the moderator, the General Assembly 20
agreed to the following resolution: "That the General Assembly desire to record
"the high satisfaction with which they have heard of the energy, Christian zeal,
"and distinguished success with which their work as a Church is carried on by
"the Synod of which Dr. Jenkins is the representative, and in bidding them God-
"speed in the great work before them in a great country, daily advancing in
"wealth and population, they feel assured that that work will be carried on by
"God's help for the future as it has been in the past, and that no union of the
"several Presbyterian bodies in Canada will be agreed to without their being all
"fully satisfied that the great object of extending the benefits of religion will by
"that union be even more vigorously and effectively carried on than now." The 30
quotation goes on to say: "The moderator then, at their request, tendered the
"thanks of the Assembly to Dr. Jenkins for his able eloquent, and most interest-
"ing address." I now hold in my hands the Acts published by the General
Assembly showing the said resolutions from which the said quotation is copied.
Further, in eighteen hundred and seventy-five a deputation from the Presby-
terian Church of Canada in connection with the Church of Scotland appeared be-
fore the General Assembly in Edinburgh. This deputation was also sent by the
Synod to Scotland, in view of the negotiations which were going forward in
regard to union, and at that General Assembly the following resolution was
passed: "The General Assembly welcome with sincere sentiments of esteem and 40
"regard the respected deputies from the Synod of Canada as brethren whose
"sacrifices in promoting the religious interests of our countrymen in that Colony
"have deserved the gratitude of the Church both at home and abroad, while
"receiving with profound concern and regret the intimation that on the subject
"of an incorporating union of Presbyterian Churches, threatened division in the
"Canadian Synods is endangering the cordiality of co-operation which is so essen-
"tial to the success of the work of the Church in all lands, the General Assembly

"claim no title to review the proceedings which have issued in that result; but the General Assembly, while continuing to recognize all old relations with the brethren in Canada, are quite prepared to declare after consideration of the terms of the proposed union as laid before them in their committee's report, as they hereby do declare, that there is nothing in the said terms of union to prevent the Assembly from *cordially wishing God-speed in their future labors* for the Lord to brethren who propose to accept the union on that basis, or from co-operating with them in any way that may be found possible in the new state of things in promoting the religious interests of Scottish Presbyterians in the Canadian Dominion." The last quotation I have read is from the "Principal Acts of the General Assembly of the Church of Scotland," which I now hold in my hand. Then I was appointed in eighteen hundred and seventy-six a delegate to the General Assembly of the Church of Scotland from the Presbyterian Church in Canada, in connection with Dr. Grant, now Principal of Queen's College. This was a year after the union took place, and we were sent to the General Assembly to report upon the condition of matters in Canada in regard to the union. The following resolution was passed by the General Assembly,—I read it from the printed Acts of the General Assembly,—eighteen hundred and seventy-six, of the Church of Scotland, which I now hold in my hand :

20 (Petitioner objects to proving the Acts and Proceedings of the General Assembly of the Church of Scotland from a document purporting to be a printed copy thereof, the original not being produced. Objection reserved by the parties.)

A. "The Assembly have heard with much interest that the union of Presbyterians in the Dominion of Canada has at length taken place. The terms on which this union has been effected, having been brought under the consideration of the last General Assembly, and that Assembly having declared that there is nothing in those terms to prevent the Assembly from wishing God-speed in their future labors for the Lord to brethren who propose to accept union on that basis, or from co-operating with them in any way that may be found possible in the new state of things, the General Assembly resolve to record, and through the respected deputies from Canada to convey to the brethren in the united Church of the Dominion, an expression of their earnest prayer that God may be pleased to hallow and bless the union, and to make it the means of promoting peace as well as all the other interests of religion among the people. The Assembly, at the same time, regret to learn that the threatened division in the Canadian Synod, of which intimation was given in the report to the last General Assembly, has, to some extent, become a reality. As to differing views of duty in regard to accepting or rejecting the union, this Assembly, like all former Assemblies, express no opinion; but being persuaded that those brethren who have declined to enter the united Church, not less than those who have accepted the union, have acted under a strong sense of duty, the Assembly assure them of their continued regard and desire for their prosperity and usefulness. And, while the Assembly will not cease to pray and use such means as may be within their power, and entreat their brethren in Canada to unite in the same prayer and efforts, that all heats may be allayed and any remaining division may be healed, they will cordially continue to co-operate in

RECORD.

In the
Court of
Queen's
Bench.

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

"any possible way with both parties in promoting the religious interests of their colonial brethren. The General Assembly having learned from the deputies that an impression exists in Canada, that the Church of Scotland regards the action of those connected with her in Canada in forming the union now consummated as an indication of disloyalty to the Parent Church, assure the deputies that they entertain no such idea; but, on the contrary, give full credit to the representations which they have received from the brethren on that subject." That is the resolution passed in my presence at the meeting of the General Assembly of the Church of Scotland in May, eighteen hundred and seventy-six, the proceedings of which I now hold in my hand and present.

Q. Then, from being present, you have a personal knowledge that the last resolution which you have just quoted was passed by the General Assembly of the Church of Scotland?

A. I have a personal knowledge that that resolution was passed.

Q. Will you be kind enough to state if you know how far, or to what extent, if at all, the said Church of Scotland, in Scotland, has recognized the minority or remnant of the Presbyterian Church in Canada in connection with the Church of Scotland, whom the said Rev. Robert Dobie, Petitioner in this cause, claims to represent, and whom he designates by the name of the Presbyterian Church of Canada in connection with the Church of Scotland?

A. I may say—and I am prepared to prove it by documentary evidence—that the ecclesiastical courts of Scotland have in one instance ignored the action of the so-called Presbyterian Church of Canada in connection with the Church of Scotland.

Q. What instance was that?

(Petitioner objects to the above as illegal evidence, the records of the said ecclesiastical court not being produced in this cause. Objection reserved by the parties.)

A. The instance of Dr. Snodgrass, who was inducted by the Presbytery of Langholm to the parish of Canonby. The Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, so-called, deposed Dr. Snodgrass from the ministry, as appears from the record filed in this cause, to wit, the minutes of the Presbyterian Church of Canada in connection with the Church of Scotland. And I state here that the Presbytery of Langholm was duly and officially informed of such deposition by the Rev. Robert Burnet, the clerk of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, so-called, and that the said Presbytery was warned against inducting the said Dr. Snodgrass to the parish of Canonby, as appears from a document which I hold in my hand and exhibit.

(Petitioner objects to the production of the said letter inasmuch as it is not in the possession of the party to whom it purports to have been sent, if sent at all, and the witness is not a competent witness to prove the sending or the receipt of the said letter. Objection reserved by the parties.)

A. This document I swear is in the handwriting of the said Rev. Robert Burnet, and with which I have been familiar for many years, and is as follows:

"London, Ontario, Dominion of Canada.

"2nd October, 1877.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

"To the Reverend Moderator of the Presbytery of Langholm :

"Dear Sir,—I am directed by the Synodical Commission of the Presby-
terian Church of Canada in connection with the Church of Scotland to represent
to the Presbytery of Langholm that we have heard with deep regret of the
presentation of the Very Reverend Principal Snodgrass to the Parish of
Canonby.

"Principal Snodgrass, as a minister of this Church and head of Queen's Col-
lege at Kingston, has made himself most active in attempting to obliterate the
honored name of the Church of Scotland in this Colony—in fact, has almost
succeeded. If it be a sin and a crime to deny the Church, he is verily guilty,
and ought not to have the opportunity effectually to do in Scotland what he
has done in Canada—overthrow the Church.

"The Very Revd. Principal has been deposed from the office of the ministry
in our Church. He was act and part in the consummation of the union re-
cently accomplished between the Church here and the bitterest enemies of the
Church of Scotland in any of the Colonies belonging to Great Britain.

"I may add that the public opinion of the Free Church regarding Principal
Snodgrass (or what those of us attached to the Church of Scotland call 'the
'logic of events') has driven Dr. Snodgrass from his sphere of labor in Canada,
as it has already driven many ministers lately belonging to the Church of
Scotland from their congregations. We in Canada, Churchmen and Scottish
Churchmen, would be recreant to our Church and to our principles did we
not thus publicly protest against the induction of the Rev. Principal Snodgrass
into any parish in Scotland.

"In name and by authority of the Commission of the Presbyterian Church
of Canada in connection with the Church of Scotland.

"ROBERT BURNET.

"Clerk of Synod and of Commission."

I shall be glad to file a notarial copy of this document. I prefer to keep the
original.

Q. Can you add anything further that could throw light upon the said
letter, signed by the said Rev. Robert Burnet, which you produced, or about the
action of the said Presbytery in reference thereto?

(Objected to, as irrelevant. Objection reserved by the parties.)

A. I stated that the Presbytery of Langholm inducted the said Rev. Dr.
Snodgrass to the parish of Canonby within its bounds in spite of the letter and
protest thus read, showing that it took no notice whatever of, perhaps, the most
solemn action which the so-called Synod ever took in its quasi-ecclesiastical char-
acter."

See also, in the same sense, the evidence of Prof. Mackerras, who proves the
same deliverances of the Church of Scotland, p. 11, Respondents' Appendix, l. 21
and l. 37, and p. 12, line 18, and p. 13, l. 10, as follows:

Q. Since the passing of said deliverance which you have just quoted by
the General Assembly of the Church in Scotland since the consummation of the

RECORD. said union, has the attitude of the said Church of Scotland, or of its General Assembly, changed, and have they co-operated in the new state of things with reference to the said united church, the Presbyterian Church in Canada, just as they did in before the said union?

*In the
Court of
Queen's
Bench.*

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

A. Their attitude has not changed, and they have co-operated in the same way as before. For many years before the union, I was convener of the Committee on Correspondence with the Colonial Committee, and I still correspond with them. I have signed and countersigned receipts just in the same capacity since the union as before the union, namely, as convener of the Correspondence Committee. That is one way. They continue to send me money as they formerly did—grants of money for the same purposes for which they gave before the union. They have also sent a deputy in the person of the Rev. George W. Spratt. He appeared before the General Assembly at its recent meeting in Ottawa and addressed the Assembly, among other things stating that the Church of Scotland wished that the union had been complete. I was present and heard him.

Q. I see that it is stated in what is called the Act of Independence of eighteen hundred and forty-four, that you have referred to, that the words in the name of the said Church, to wit, "in connection with the Church of Scotland," denote merely the connection of origin, identity of standards and ministerial and Church communion with the said Church of Scotland in Scotland; allow me to ask you if any change has occurred, or whether the standards and ministerial and Church communion in the united church are not the same as before?

A. Quite the same; I may say also, the Presbyterian Church in Canada, by its polity, allows its congregations to call ministers in charges in the Church of Scotland, or ministers or missionaries who have been commissioned by the said Church of Scotland.

Q. Is it true, as stated by Mr. Brymner, a witness examined in this case on the part of the Petitioner, that by the preamble and basis of union, which you have already referred to, the whole Confession of Faith, which was the Confession of Faith of the Presbyterian Church of Canada in connection with the Church of Scotland, is not adopted by the Presbyterian Church in Canada?

A. It is adopted in its fullness, as appears by the said basis of union, the last clause of the second article of the basis of union being a mere explanatory note. "It being distinctly understood that nothing contained in the aforesaid Confession or Catechisms regarding the power and duty of the civil magistrate shall be held to sanction any principles or views inconsistent with full liberty of conscience in matters of religion."

Q. Was there anything different from that last clause held under the former régime, that is to say, in the Presbyterian Church of Canada in connection with the Church of Scotland? was it ever held that there was anything inconsistent with liberty of conscience?

A. The Presbyterian Church of Canada in connection with the Church of Scotland have always entertained the view expressed in that explanatory note.

By virtue of that inherent independence of the Presbyterian Church of Canada in connection with the Church of Scotland the union was proposed in the Synod and negotiated independently of the Church of Scotland.

Ev. of Dr. Jenkins, p. 59, Respondents' Appendix, l. 13,—Rev. R. Campbell, RECORD.
p. 98, l. 10.

This Presbyterian Church of Canada in connection with the Church of Scotland "was the owner of the Temporalities Fund" in question, and acting through its Synod or highest spiritual, judicial and legislative court always controlled it.

Here a short history of the origin of the Fund will be in place, and the Respondents cannot do better than refer to the *resumé* of His Honor Mr. Justice Jetté, given in his motives of the judgment, as follows:

"The Quebec Act (1774) had guaranteed to the Roman Catholic clergy the right they possessed before the cession of this country to England, to demand and receive their customary *dimes* or tithes. The Protestant clergy saw in this guarantee a privilege accorded to the Roman Catholic Church which justified them in demanding a corresponding favor. In 1791, by the Statute 31 George III., cap. 31 (amending the Quebec Act), the Imperial Parliament, wishing to acknowledge this claim, made provision for the support of a Protestant clergy in the two Provinces of Upper and Lower Canada, in sanctioning an appropriation by the Governments of these two Provinces, of a reserve for this purpose of certain lands from the public domain. These lands thus appropriated were styled Clergy Reserves. In 1827, by the Acts 7 and 8 George IV, the Imperial Parliament authorised the sale of a part of these lands on condition that the proceeds were invested in the public funds and the revenues exclusively applied to the maintenance of a Protestant clergy. In 1840 the Statute 3 and 4 Victoria, ch. 78, sanctioned the sale of all these lands, under certain restrictions as to the quantity to be sold annually. In 1853, the Imperial Parliament authorised the Legislature of the United Province of Canada to legislate for the management of the Clergy Reserves, with this restriction, that the moneys theretofore given to the clergy of the Churches of England and Scotland, or to any other denomination of Christians, should not be withheld, reduced or in any manner affected by the legislation of the said Province during the lives of the persons having a right in the said annual grant (16 Vic., ch. 21). By virtue of the power conferred on it the Legislature of Canada enacted in 1854 (18 Victoria, ch. 2) that the proceeds of the lands constituting the "Clergy Reserves" situated in Upper Canada, and those in Lower Canada should form two separate and distinct funds, which should be styled, respectively "The Municipal Fund of Upper Canada," and the "Municipal Fund of Lower Canada," and that conformably to the Imperial Acts, these funds should be charged firstly, and in preference over any other charge, with the payment of the above mentioned annual allowances to the Protestant clergy, during the lives of the incumbents, who had this right at the time of the sanction of the statute 16 Vic. ch. 78, namely, the 9th May, 1853. To secure this payment, it was enacted that the capital required to guarantee these annual allowances should be invested in the public funds, and the surplus, if any, apportioned to the municipalities of the said two Provinces, according to population. The right which the Imperial Parliament desired to protect and secure under the statute 16 Victoria, ch. 78, were thus preserved, but the system thus organized made the State debtor for these annual appropriations, and the fund representing the same, during the full term of the lives of the then incumbents. The third section of this law clearly indicates that this style of enactment adopted to satisfy the rule of the Imperial

In the
Court of
Queen's
Bench.

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

RECORD. Act was not what our Parliament preferred. Anxious to put aside all appearance of union between Church and State, as it declared, and to settle promptly and finally all reclamations that might exist against those funds of the "Clergy Reserves" the Legislature by this 3 section authorized the Executive to commute and extinguish the same, with the consent of the parties interested, by the immediate payment of the capital (at the rate of 6 per cent.) calculated on the basis of the probable life of each incumbent. At the beginning of this legislation the clergy of the Church of England had been alone benefitted and had raised the pretension of being solely entitled to the benefit of these reserved lands. But about the year 1820, the members of the Church of Scotland presented a claim, 10 as well for their clergy as for those of the other Protestant denominations, for a share and interest in these Reserves, proportioned to the number of the members of each Church. This reclamation, for a long time contested and opposed, was finally admitted, and when the statute of 1854, to which I am about to refer, was passed, the right of the ministers of the Presbyterian Church of Canada in connection with the Church of Scotland to the benefits of the statute had been for a long time acknowledged."

*In the
Court of
Queen's
Bench.*
No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

The Government absolutely refused to commute with any individuals, but insisted upon commuting for the benefit of the Church, through commissioners appointed by its Synod. See Ev. of Rev. R. Campbell, Respondents' Appendix, 20 p. 101.

The provisions of the law of 1854, relative to the commutation of the annual allotments, payable to each minister, appearing satisfactory, a meeting of Synod of said Church was convoked to decide on united action in relation to this commutation. The meeting was held in January, 1855, and the following resolution unanimously adopted: "Resolved, 1st. That it is desirable that such commutation, if upon fair and liberal terms, should be effected; and that the Rev. Alexander Mathieson, D.D., of Montreal, the Rev. John Cook, D.D., of Quebec, Hugh Allan, Esq., of Montreal, John Thompson, Esq., of Quebec, and the Hon. Thomas McKay, of Ottawa city, be the Synod's Commissioners, with 30 full power to give the formal sanction of the Synod to such commutation as they shall approve, the said Commissioners being hereby instructed to use their best exertions to obtain as liberal terms as possible; the Rev. Dr. Cook to be convener; three to be a quorum; the decision of the majority to be final, and their formal acts valid; but that such formal sanction shall not be given except in the case of ministers who have also individually given them, the said Commissioners, power and authority to act for them in the matter, to grant acquittance to the Government for the claims to salary to which the faith of the Crown is pledged; and to join all sums so obtained into one fund, which shall be held by them till the next meeting of Synod, by which all further regulations shall be made; the 40 following, however, to be a fundamental principle which it shall not be competent for the Synod at any time to alter, unless with the consent of the ministers granting such power and authority; that the interest of the fund shall be devoted, in the first instance, to the payment of £112 10s. each, and that the next claim to be settled, if the fund shall admit, and as soon as it shall admit of it, to the £112 10s. be that of the ministers now on the Synod's roll, and who have been put on the Synod's roll since the 9th May, 1853, and also, that it shall be considered

a fundamental principle, that all persons who have a claim to such benefits, shall be ministers of the Presbyterian Church of Canada in connection with the Church of Scotland, and that they shall cease to have any claim on, or be entitled to any share of, said commutation fund, whenever they shall cease to be ministers of the said Church. 2nd. That so soon as said commutation shall have been decided upon and agreed to by the said Commissioners, the Rev. John Cook, D.D., of Quebec, shall be fully empowered and authorized and this Synod hereby delegate to the said Rev. John Cook full power and authority to endorse and assent to the several powers of attorney from the individual parties on behalf of the said Synod and in their name, and as their act and deed, as evidencing their assent thereto. 3rd. That all ministers be and they are hereby enjoined and entreated (as to a measure by which, under Providence, not only their own present interests will be secured, but a permanent endowment for the maintenance and extension of religious ordinances in the Church), to grant such authority in the fullest manner, thankful to Almighty God that a way so easy lies open to them for conferring so important a benefit upon the Church. 4th. That the aforesaid Commissioners be a committee to take the necessary steps to get an act of incorporation for the management of the general fund so to be obtained; the aforesaid Commissioners to constitute the said corporation till the next meeting of Synod, when four more members shall be added by the Synod." Agreeably to this resolution all the ministers of the said Church gave full power to the Commissioners, named for this purpose by the Synod, to arrange with the Government, and to unite all the sums thus realized in a common fund, according to the terms of the said resolution. The commutation of the several individual reclamations produced a sum total of £127,448 5s. 0d., which the Government handed to the Commissioners named by the Synod. In 1858 these Commissioners, acting according to the instructions contained in the afore-mentioned resolution (§4) demanded and obtained from the Parliament of united Canada an Act creating a special corporation for the administration and the possession of this fund of £127,448 5s. 0d., and of all other sums by which it might thereafter be increased. This corporation received the name of "The Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," and is one of the Respondents in this case. (22 Victoria, chap. 66.) It is declared by this statute that this corporation is created "for the management and holding of certain funds of the Presbyterian Church of Canada in connection with the Church of Scotland, now held in trust by certain Commissioners hereinafter named, on behalf of the said Church and for the benefit thereof;" but in the first section it is enacted that "such holding is subject always to the special condition that the annual interest and revenues of the said moneys and fund now in their hands shall be and remain charged and subject as well as regards the character as the extent and duration thereof, to the several annual charges in favor of the several ministers and parties severally entitled thereto, of the several amounts and respective characters and durations as the same were constituted and declared at the formation of the said funds and the joining of the same into one fund".... The second section of this statute then provides for the mode of election and replacing of members of this Board created a corporation as aforesaid. According to the dispositions of this section, the Board shall be com-

RECORD.

*In the
Court of
Queen's
Bench.*

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

RECORD. posed of twelve members, five being ministers and seven laymen; four of members in order of seniority, viz., two ministers and two laymen retiring each year on the third day of the annual assembly of Synod of said Church, and being replaced by two ministers and two laymen elected by said Synod. In case of death, resignation, or absence from the Province, or withdrawal from communion in said Church, the vacancies shall be filled by the other members of the Board, subject to ratification of the appointments thus made by the Synod at its next ensuing meeting, so that, as stated in the second section, "this Board shall always consist of twelve members, five of whom shall be ministers and seven laymen, and all being ministers or members in full communion in said Church."

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

It will thus be seen from the foregoing that the Fund belonged to the Church which acting by its Synod has always controlled and managed it. That the Board, Respondents, was a mere creation of the Church, and that the Synod obtained its incorporation to manage the fund.

In addition to the statement of the learned judge, as to the origin of the fund, where he states that a share was claimed by the Church, not only for itself, but for other Protestant denominations, the evidence shows that this was only reasonable and in accordance with the opinion of the Judges of England, given to Lord John Russell in 1840 as follows:—"We are of opinion that the words 20 "Protestant clergy" in 31 George III, chap. 31, are large enough to include and "do include other clergy out of the Church of England and Protestant bishops, "priests and deacons that have received episcopal ordination. When your Lordships ask if any other clergy are included, what other clergy? we answer that "the Church of Scotland is one instance of such other Protestant clergy. And "further in answering your Lordships if we specified no other clergy than the "clergy of the Church of Scotland, we did not intend thereby that the clergy of "no other Church than the Church of Scotland may not be included under such "term 'Protestant clergy.'"

See evidence of Rev. R. Campbell, p. 91 Respondents' Appendix, l. 14. This 30 opinion is to be found in the library of the Parliament House at Quebec, see Appendix 35 to Proceedings and Journals of 1856. It was also acted upon, and other Protestant bodies, including the Wesleyan Methodists got a share, see evidence of Rev. R. Campbell, p. 92 Respondents' Appendix, l. 10-20.

It might be well here to explain the nature of the Synod and its relation to the Church.

See evidence of Rev. Dr. Jenkins, p. 45 of Respondents' Appendix, l. 30. "The Synod is the supreme court of the Church. Its powers are two-fold, first, judicial; second, legislative. As a judicial court, it is a court of final appeal in all cases of discipline tried in the lower courts and appealed from them. Legis- 40 latively, its jurisdiction is two-fold, first, it has a spiritual jurisdiction bearing upon the control of all religious matters; second, it has a secular jurisdiction bearing upon all matters of property, or in the nature of property relating to the Synod," and *idem*, p. 46, l. 10.

The Synod represents the whole of the congregations of the Church. It arrives at a finding or result by the vote or decision of the majority of its members, and that is binding on the minority and on the Church, l. 18. It is "the

voice of the Church." See evidence of Prof. Mackerras, p. 21, Respondents' Appendix, l. 22.

Respondents here especially urge that the Synod was *not merely an ecclesiastical court but controlled property and temporal matters.*

See evidence of Prof. Mackerras, Respondents' Appendix, p. 20, l. 42, and p. 21 to l. 24. It controlled the Widows' and Orphans' Fund as well as this Temporalities Fund, and congregations desiring to sell their property had to ask permission from the Synod, and it passed a model deed for holding the property of congregations. See in same sense, evidence of Rev. R. Campbell, p. 102, l. 8 and 10 l. 30; p. 103, l. 20 and l. 40.

The proposition naturally flowing from this is, that if the Church as a Church, acting through its lawful representatives in Synod assembled, agreed to unite with the three other bodies of Christians, it did not thereby forfeit its title to its property, including the "Temporalities Fund," but took the same with it into the union, and that altogether independently of any Act of Parliament. The fact of the union cannot be denied. The original articles of the union were produced in court and proved.

It was the "Presbyterian Church of Canada in connection with the Church of Scotland" which united with the others to form the "Presbyterian Church in 20 Scotland." It was the Church as a Church which united, and not merely a few individuals, as the Petitioner falsely puts in his petition. He attempts to make out that the Rev. Dr. Cook and several others seceded from their Church and formed the "Presbyterian Church in Canada," and that he, the Rev. Mr. Dobie, remained true to his Church.

The very reverse is the fact. Upon the 14th of June, 1875, the Synod resolved, see page 35 of the minutes of eighteen hundred and seventy-five, Petitioner's Exhibit "BBB," as follows: "The Synod resolves, and hereby does
30 "record its resolution, to repair, on the adjournment of the court to-morrow, to
"the Victoria Hall, commonly known as the Victoria Skating Rink, the appointed
"place of meeting, for the purpose of consummating the union with the aforesaid
"Churches and of forming one General Assembly to be designated and known as
"the General Assembly of the Presbyterian Church in Canada; and does at the
"same time declare that the United Church shall be considered identical with
"the Presbyterian Church of Canada in connection with the Church of Scotland,
"and shall possess the same authority, rights, privileges, and benefits to which
"the Church is now entitled, except such as have been reserved by Acts of Par-
"liament. And further, with the view of ratifying the act of union the Synod
"does empower its moderator to sign in its name the preamble, the basis of union,
"and also the resolutions adopted in connection therewith."

40 As the moderator did thus sign the preamble and basis of union, and also the resolutions, this shows that the union was the act of the Church, and that the "Presbyterian Church in Canada" is, according to this resolution, identical with the "Presbyterian Church of Canada in connection with the Church of Scotland."

Upon the next day, the 15th of June, 1875, the Synod met at its usual place of meeting, in St. Paul's Church, Montreal, to carry out the foregoing resolution, and did legally adjourn to the Victoria Hall to consummate the union. Only eight ministers, including the Rev. R. Dobie and the Rev. J. S. Mullan remained behind.

RECORD.

In the
Court of
Queen's
Bench.

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.

—continued.

RECORD.

—
*In the
 Court of
 Queen's
 Bench.*
 —

No. 65.
 Respondents
 Case, filed
 24th Feb-
 ruary 1880.
 —continued.

The Synod having adjourned to the Victoria Hall, resumed their session, and continued to transact business there *as the same Synod* for about an hour before the articles of union were signed by its moderator, and the union consummated.

Notwithstanding this, the Rev. R. Dobie and six other ministers remaining behind in St. Paul's Church, assumed to call themselves the Synod, and pretended to consider the Synod which they had acknowledged to be legally constituted and which was actually then sitting in session in Victoria Hall, as seceders from them. There could not be two Synods existing at the same time; therefore in attempting to set up a Synod of their own, these seven dissenters from the vote 10 on union seceded from their Synod and Church.

The pretence that the seven dissenters, out of 117 ministers who were then upon the Synod's roll, continued the Synod and Church, is contrary to all reason.

The Rev. J. S. Mullan, who at first was one of the dissentients, and remained behind with them, upon seeing the *reductio ad absurdum* resulting from these few individuals calling themselves the Church and Synod, only waited long enough to see them go through the farce of pretending to elect a moderator, and after protesting against the illegality of the whole affair, left, and reached the Victoria Hall in time to find the Synod still in session, and to answer to his name and join the union. See his evidence, p. 38 *et seq.* of Respondents' Appendix. 20

By the law of the Church no Synod can exist without a quorum of fifteen members; therefore, as only seven remained in St. Paul's Church, they could not continue, form or constitute a legal Synod. See evidence of Rev. Dr. Jenkins, p. 45, l. 8; Rev. Prof. Mackerras, p. 9, l. 18; Rev. R. Campbell, p. 104, l. 25 of Respondents' Appendix; also, Synod's minutes of 1868, Respondents' Exhibit 3,3, p. 49, sec. 1, sub.-sec. 6.

The Petitioner's proposition really amounts to this—that a minority must rule. That because seven men dissented from the resolution of the Church and Synod to unite, therefore the Church and Synod seceded from these seven men, and the seven constitute the Church and Synod. To show the utter fallacy of 30 such a proposition it has only to be pushed to the extreme. If the principle is sound as to seven, it applies equally to a minority of five, four, three, two or one.

Thus, if Petitioner had been the only dissentient, he would be entitled, according to his logic, to say—I, the Rev. Robert Dobie, am the "Presbyterian Church of Canada in connection with the Church of Scotland" and the Synod thereof, and entitled to all its property, rights and privileges.

This is really what the Petitioner is aiming at in this case for himself and half-a-dozen others. The prize was worth contending for. Four hundred thousand dollars divided amongst six would represent a very comfortable fortune.

The truth is that the Petitioner, and the six others who dissented with him, 40 are seceders, and by leaving the Church would have lost all claims upon the Fund according to the terms of the original resolution and of the Act incorporating the Board for its management, had it not been for the generosity of the Synod in preserving to them their former allowances by the Quebec Act, 38 Vic., c. 64, and by the Ontario Act, 38 Vic., c. 75.

This act of good-will they have not appreciated, and the Petitioner has not perceived as yet that if he should prove successful in establishing the unconsti-

tutionality of these Acts he will effectually destroy his own pretensions, and be cut off from his allowance forever, for it is only by virtue of these Acts that he can claim any stipend whatever, seeing that he lost his claim by seceding from the Church.

The Petitioner's pretension that a fundamental principle has been violated is utterly without foundation, except that he himself violated a *fundamental* principle by means of his injunction, which prevented the Board from carrying out the fundamental principle of paying those who had claims upon it.

It will be remembered that the stipends of all ministers were to revert at their death to the general fund, see minutes of Synod for 1856, p. 23, Respondents' Exhibit 3.3, and all commuting ministers renounced their rights, subject only to these principles, viz., that they should receive £112 10s during life, and that eleven ministers placed on the Synod's roll since the 9th of May, 1853, should be the next claimants on the fund.

That both of these classes should forfeit their claims when they ceased to be ministers in connection with the Church.

Even these principles could be changed with the consent of those who commuted, but they have not yet been changed or violated. They have all been respected and continued by the hereinbefore quoted Acts of Parliament.

20 The Petitioner alone, as already shewn, has attempted to violate them.

Of the original commuting ministers, who numbered seventy-three, only thirty survive, and out of these only six dissent from the union, and their rights are guaranteed by the Acts of Parliament. Rev. R. Dobie acts alone in this case, and is the only litigant. It is not to be presumed that the other five approve of his doings. All the rest consent to the present administration of the Fund. See evidence of Prof. Mackerras, p. 3, l. 34, p. 20, l. 10.

At argument, Petitioner professed to have a grievance because he was not eligible to election upon the Board, Respondents, and therefore that his civil rights were interfered with. But that claim is unsupported by authority. Any rights to election upon the Board were conferred upon him through the Synod. 30 The mode of filling the vacancies was not dictated or stipulated by the original commutators.

It was the Synod who devised the mode of election and got the original act of incorporation passed which provided for the mode of election. And it was the same Synod which changed the mode of election by obtaining the passing of the Quebec and Ontario Acts above referred to. Any franchise therefore which Petitioner ever had depended upon the will of the Synod, so that he cannot rightfully complain that his civil rights are taken away. If he is disfranchised, it is by his own act in seceding from the Synod and Church.

40 He is, however, well represented upon the Board by his friends, Sir Hugh Allan and the Rev. G. Lang, the two Respondents, who have declared that they do not object to his petition being granted.

The Respondents will now consider *seriatim* the conclusions demanded by the Petitioner.

1st. That the Quebec Act 38 Vic., c. 64, be declared to be unconstitutional.

The Respondents again respectfully submit, for reasons above given, that it is constitutional.

RECORD.

In the
Court of
Queen's
Bench.

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

2nd. That the Board, Respondents, be restrained from acting, upon the ground that they have been illegally elected.

It follows that if the above Act be declared constitutional, this conclusion cannot be granted. Besides, he has no right or interest to raise this. As he lost all his rights by his secession, he can only claim the rights which the Act gives him. If he destroys the Act, he at the same time destroys his case.

3rd. That the Fund be declared to be a fund held in trust for the benefit of the Presbyterian Church of Canada in connection with the Church of Scotland, and for the benefit of those who *have not ceased to be members thereof*, i.e. for the benefit of the Rev. Mr. Dobie and his six friends.

This is a very insidious conclusion, and would reach far beyond the issues and the parties to this cause if granted. It simply means that the Petitioner wishes the Court to deprive 116 ministers, who are not defendants, of their rights—to condemn them unheard. Such a proposition is contrary to the rules of pleading and to justice.

Here, also, the Petitioner is arrogating the right of praying for his friends, whom he shews no authority to represent. In the body of his petition he only sets up his own personal qualities and claims and grievances, but he is generous and wide-spreading and philanthropic in his conclusion.

4th. That the Rev. Drs. Cook, Muir and Bell be declared not to be entitled to receive any portion of the Fund, and to have ceased to be members of the Presbyterian Church of Canada in connection with the Church of Scotland.

So far as Dr. Cook is concerned, who is one of the Respondents and who has been heard, the Respondents submit that this conclusion should not be granted, for all the foregoing reasons.

So far as Drs. Muir and Bell are concerned, it ought not to be granted for the same reasons, and because they have not been made parties to the cause and have not had an opportunity of being heard.

No Court will take away a person's rights without giving him a hearing.

5th. That the Rev. John Fairlie, Rev. W. Morrison, Rev. C. A. Tanner, be declared not entitled to receive any sum whatever, and the Respondents ordered not to pay to them or to Drs. Cook, Muir, Bell, or to any *other* person whomsoever, any sum of money whatever out of the capital or the revenues.

The answer to the previous conclusion applies here. None of these gentlemen named have been made parties to the suit, or have been heard. The Court cannot take away their rights.

Then in the prayer that the Respondents be ordered not to pay "to any other person whomsoever any sum of money whatever," a great deal more than would at first sight appear is included.

At the time of the union there were 117 ministers on the roll as proved by Professor Mackerras, p. 18, l. 17.

This conclusion then means that the whole of these with the exception of the Rev. M. Dobie, and perhaps his six faithful followers are to be deprived of their rights, and all this without a hearing.

Before closing this factum, the Respondents desire to remark that the Petitioner takes no conclusions to attack or set aside the Ontario Act, 38 Vic., c. 75, under which the Board are acting, and by which he is bound, or to set aside the

Union Act of Quebec, 38 Vic., c. 62, both of which contain provisions similar to those contained in the Act 38 Vic., c. 64, which the Petitioner attacks and asks to have declared unconstitutional.

To sum up the argument, the Respondents submit the following "propositions of fact which cannot be successfully assailed, and of law which they respectfully submit are well founded.

1. That the Act impugned 38 Vic., c. 64, of Quebec, is legal and constitutional.
2. That the "Clergy Reserves" were set apart for the support of a "Protestant Clergy."
3. That "The Presbyterian Church of Canada in connection with the Church of Scotland," claimed a share for herself and other Protestant bodies, because their Clergy were a Protestant Clergy. That the Wesleyan Methodist and other Protestant bodies also got a share.
4. That the Government would not commute with individual ministers.
5. That the claims of the ministers were converted into a life interest, which was to revert at their death to the general fund which belonged to the Church and Synod.
6. That the Church and Synod was the owner of the fund, got the Board of Management incorporated, always controlled the fund, and even changed the principles upon which it was distributed, without objection by the Petitioner, thus showing that it had power over the fund.
7. That the Synod had power over property as well as over matters spiritual.
8. That the Church was a voluntary association and independent in its origin, the Synod being formed on the suggestion of Sir George Murray, Secretary of State for the Colonies, in 1830.
9. That after its formation the Church of Scotland acting through its Colonial Committee in 1844, declared that it had no jurisdiction or control over the Church in Canada.
10. That in 1844 the Synod of the "Presbyterian Church of Canada in connection with the Church of Scotland," passed an act declaring that the Synod was free and uncontrolled, and defining the words "in connection with the Church of Scotland" to signify only identity of origin and standards and ministerial and Church communion.
11. That the Church and its members were bound by a majority acting by a vote in Synod.
12. That the union was the act of the Church which, while changing its name, retained its identity and property, rights and privileges.
13. That the Petitioner in refusing to abide by the voice and act of his Church, seceded and lost his claim upon the Fund.
14. That the Church having done a lawful act in forming the union, required no Act of the Legislature to authorize or legalize the union or to allow it to retain its property, but the Acts were obtained simply to amend the former Act and to regulate the administration and disposition of the Fund under the new circumstances, as well as to enable the Board to conciliate and deal generously with the Petitioner and the few others who had not adhered to their Church,

RECORD.

*In the
Court of
Queen's
Bench.*

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

RECORD. thereby losing their claim; all this in the hope that they would see their way to fall into the ranks of the united church.

*In the
Court of
Queen's
Bench.*

No. 65.
Respondents
Case, filed
24th Feb-
ruary 1880.
—continued.

15. That the basis of union contained no change in doctrine and standards, and was approved of by the Church of Scotland, to which the Rev. R. Dobie professes so much attachment.

16. That the four uniting Churches were Presbyterian bodies, identical in creeds and standards, and only joined for the better promotion of their common objects.

JOHN L. MORRIS,
Attorney for Respondents. 10

Montreal, 19th January, 1880.

AUTHORITIES CITED BY RESPONDENTS:

- 1st. As to Constitutionality of the Acts, *Cowan v. Wright*, 23 Grant's Chancery Reports, p. 616.
- 2nd. As to voluntary character of the Church, and that the minority are bound by the majority who retain their property and identity, even though they unite and change their name.
- Doe Methodist Episcopal Trustees v. Brass*, U. C. Reports, Old Series, Vol. 6, page 437.
- Long v. Bishop of Cape Town*; 1 Moore, Priv. Co., N. S. 461.
- Bishop of Natal v. Gladstone*; Law Rep., 3 Equity Cases, p. 35.
- Murray v. Burgess*; 4 Moore, P. C., N. S. 261.
- Forbes & Eden*; 1 Law Reports, Scotch Appeals.

20

RESPONDENTS' APPENDIX.

Deposition of James S. Mullan, witness for Respondents. (Already printed.) See page 237.

Deposition of John Hugh Mackerras, produced by Respondents. (Already printed.) See page 242.

Deposition of Rev. John Jenkins, produced by Respondents. (Already printed.) See page 277.

Deposition of Rev. Robert Campbell, produced by Respondents. (Already printed.) See page 304.

Deposition of Rev. Gavin Lang, produced by Respondents. (Already 30 printed.) See page 339.

Admission of the Parties. (Already printed.) See page 154.

(Endorsed.)

Respondents' Factum—Filed 24th February, 1880.

(Paraphed) L. W. M.

DOCUMENT X.

RECORD.

Transcript of the Proceedings had and Entries made in the Register of the Court of Queen's Bench (Appeal Side).

*In the
Court of
Queen's
Bench.*

30th December 1879.

Messrs. Macmaster, Hall & Greenshields, of counsel for the said Appellant, file a præcipe for writ of appeal, and writ issued.

No. 66.
Proceedings
in the Court
of Queen's
Bench, from
30th Dec.
1879 to 11th
Nov. 1880.

19th January 1880.

The Appellant files an authentic copy of said writ of appeal, with return of service and deposit thereof.

10

22nd January 1880.

The writ of appeal is returned with schedules annexed thereto.

Messrs. Macmaster, Hall & Greenshields appear for the Appellant.

27th January 1880.

J. L. Morris, Esquire, appears for the Respondents.

The Respondents file demand of reasons of appeal.

16th February 1880.

Answers to the reasons of appeal are filed on behalf of said Respondents, excepting Rev. Gavin Lang and Sir Hugh Allan.

24th February 1880.

20 The Respondents file their printed case.

3rd March 1880.

Reasons of appeal are filed on behalf of said Appellant.

6th March 1880.

Mr. Justice Cross files a declaration, as follows :

I, the undersigned, one of the Justices of the Court of Queen's Bench, do hereby declare that I am disqualified to sit in this cause, having been consulted by one of the parties.

Montreal, 6th March 1880.

A. CROSS,
J. Q. B.

30

8th March 1880.

The Respondents inscribe the case on the roll for hearing on the merits *ex-parte*.

The Respondents file a notice of inscription of the cause for hearing on the merits *ex-parte*.

10th March 1880.

There is filed a petition on behalf of Respondents for the adoption of the necessary steps for the appointment of a Judge *ad hoc* to replace Mr. Justice Cross, also an order conformable thereto, signed by the Honorable Sir A. A. Dorion, Chief Justice.

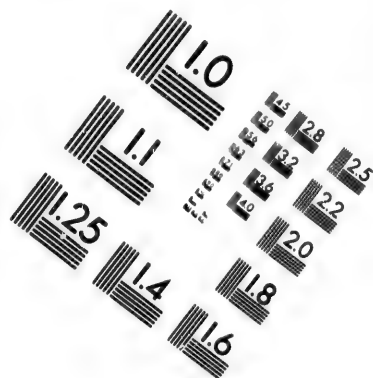
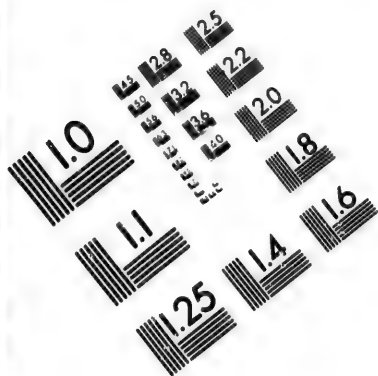
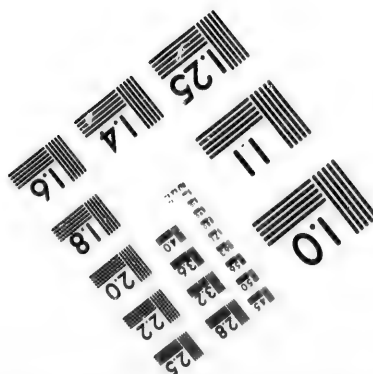
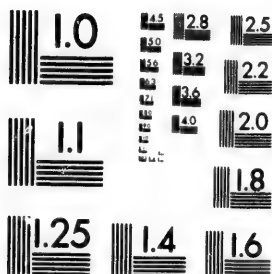


IMAGE EVALUATION TEST TARGET (MT-3)



28
25
22
20

01

RECORD.

*In the
Court of
Queen's
Bench.*

No. 66.
Proceedings
in the Court
of Queen's
Bench, from
30th Dec.
1879 to 11th
Nov. 1880.
—continued.

11th March 1880.

Present :

The Honorable Sir ANTOINE AIMÉ DORION, Knight, Chief Justice.
“ “ Mr. Justice MONK.
“ “ Mr. Justice RAMSAY.
“ “ Mr. Justice TESSIER.

It is considered that this cause should have precedence over other causes as to hearing, and it is fixed for Monday the fifteenth instant.

12th March 1880.

There was received, this day from the Chief Justice of the Superior Court a 10 letter which is here transcribed as follows, to wit :

L. W. MARCHAND, Esq.,

Quebec, 11th March 1880.

Clerk of Appeals.

Sir,—I have to acknowledge the receipt of your letter dated the tenth instant, notifying me that one of the Judges of the Superior Court for Lower Canada is required to sit and act in the cause pending in the Court of Queen's Bench (Appeal Side) wherein the Revd. Robert Dobie is Appellant and the “ Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland ” Respondents, in lieu and stead of the Honorable Judge A. Cross, who is incompetent to sit in the 20 said cause, and having communicated with the Judges of the said Superior Court, it has been arranged that the Honorable Judge McCord will sit and act at the hearing of the cause above mentioned.

I have the honor to be, Sir,

Your obedient Servant,

(Signed) W. E. MEREDITH,

C. J. S. C.

15th March 1880

Present :

The Honorable Sir ANTOINE AIMÉ DORION, Knight, Chief Justice. 30
“ “ Mr. Justice MONK.
“ “ Mr. Justice RAMSAY.
“ “ Mr. Justice TESSIER.

The hearing on the merits is postponed until Wednesday, the seventeenth instant.

16th March 1880.

The Appellant files his printed case.

17th March 1880.

Present :

The Honorable Sir ANTOINE AIMÉ DORION, Knight, Chief Justice. 40
“ “ Mr. Justice MONK.
“ “ Mr. Justice RAMSAY.
“ “ Mr. Justice TESSIER.
“ “ Mr. Justice MCCORD, *ad hoc*.

The parties having been heard by their counsel respectively on the merits.

Curia advisare vult.

19th June 1880.

Present :

The Honorable Sir ANTOINE AIMÉ DORION, Knight, Chief Justice.

" " Mr. Justice MONK.

" " Mr. Justice RAMSAY.

" " Mr. Justice TESSIER.

" " Mr. Justice McCORD, *ad hoc*.

RECORD.

*In the
Court of
Queen's
Bench.*No. 66A.
Judgment
of the Court
of Queen's
Bench,
rendered
19th June
1880.

The Court of our Lady the Queen, now here, having heard the Appellant and Respondents by their counsel respectively, examined as well the record and proceedings had in the Court below, as the reasons of appeal filed by the Appellant and the answers thereto, and mature deliberation on the whole being had ;

Considering that there is no error in the judgment appealed from, to wit, the judgment rendered by the Superior Court for Lower Canada, sitting at Montreal, in the district of Montreal, on the twenty-ninth day of December, one thousand eight hundred and seventy-nine, doth affirm the same with costs to the Respondents against the Appellant.

The Honorable Justice Ramsay and Tessier dissenting.

And on motion of John L. Morris, Esquire, Attorney for Respondents, the Court doth grant him distraction of costs.

20 The Appellant seeing the judgment herein rendered this nineteenth day of June, instant, moves for leave to appeal from said judgment to Her Majesty in her Privy Council, upon entering security within the lawful delay.

It is ordered that the Respondents do show cause to the contrary on Tuesday, the twenty-second day of June, instant, and that a rule do issue accordingly, returnable on that day.

No. 66B.
Proceedings
on motion
for leave to
appeal to
Her Majesty
in Her
Privy
Council.

22nd June 1880.

Present :

The Honorable Sir ANTOINE AIMÉ DORION, Knight, Chief Justice.

" " Mr. Justice MONK.

30 " " Mr. Justice RAMSAY.

30 The Appellant returns the rule issued on the nineteenth instant, and the same is continued over to next term.

11th September 1880.

Present :

The Honorable Sir ANTOINE AIMÉ DORION, Knight, Chief Justice.

" " Mr. Justice MONK.

" " Mr. Justice RAMSAY.

40 The parties file a consent in writing that the motion and rule for leave to appeal to Her Majesty's Privy Council, may be heard before the said Court composed of the Honorable the Chief Justice, and the Honorable Justices Ramsay, Monk and Cross, and adjudicated upon by the Court so constituted.

And the parties having been heard by counsel on said Appellant's motion for leave to appeal.

Curia advisare vult.

RECORD.

17th September 1880.

Present :

*In the
Court of
Queen's
Bench.*

The Honorable Sir ANTOINE AIMÉ DORION, Knight, Chief Justice.
 “ “ Mr. Justice MONK.
 “ “ Mr. Justice RAMSAY.
 “ “ Mr. Justice CROSS.

No. 66c.
 Order of
 Court grant-
 ing leave to
 appeal to
 Her Majesty
 in Her
 Privy
 Council.

The Court having heard the parties by their counsel respectively on Appel-
 lant's motion for leave to appeal to Her Majesty in Her Privy Council, and
 maturely deliberated : doth declare absolute the rule issued in this cause on said
 motion, and the said Appellant is hereby allowed to appeal to Her Majesty in 10
 Her Privy Council, from the judgment rendered in this Court on the nineteenth
 day of June last, on his giving within six weeks the security required by law ;
 and in default of such security being given within said delay, it is ordered that
 the record be forthwith remitted to the Court below without any further order.

No. 66d.
 Proceedings
 in execution
 of bail bond.

30th September 1880.

Present in Chambers :

The Honorable Mr. Justice RAMSAY.

Pursuant to notice given, the Reverend Robert Dobie offers as security of
 his appeal to Her Majesty in Her Privy Council, Joseph Hickson, Grand Trunk
 General Manager, and James S. Hunter, Notary, both of the City of Montreal, 20
 who having justified their solvency, the said Joseph Hickson upon real estate,
 do execute their bail-bond, which is taken, acknowledged and fyled.

No. 67.
 Bail Bond,
 filed 30th
 Sept. 1880.

BAIL BOND.

Canada, } In the Court of Queen's Bench.
 Province of Quebec. } Appeal Side.

No. 144. In a certain cause between

The Reverend Robert Dobie, of Milton, in the County of
 Halton and Province of Ontario, Minister, (Peti-
 tioner in the Court below), - - - - - Appellant.
 and

“ Board for the Management of the Temporalities Fund
 of the Presbyterian Church of Canada in connection
 with the Church of Scotland,” a body politic and cor-
 porate, duly incorporated and having an office and prin-
 cipal place of business in the City of Montreal, and the
 Reverend Daniel M. Gordon, Bachelor of Divinity,
 Minister of St. Andrew's Church of Ottawa, Province
 of Ontario, Reverend John Cook, Doctor of Divinity,
 Minister of St. Andrew's Church, Quebec, Province
 of Quebec, Reverend John Jenkins, Doctor of Di-
 vinity, Minister of St. Paul's Church of Montreal,

30

40

Province of Quebec, Reverend Gavin Lang, Minister of St. Andrew's Church of Montreal, Province of Quebec, Sir Hugh Allan of Ravenscraig, Montreal, Province of Quebec, John. L. Morris, Esquire, Advocate of Montreal, Province of Quebec, Robert Dennistoun, Esquire, County Judge of Peterborough, Province of Ontario, and William Walker, Esquire, Merchant of Quebec, Province of Quebec, The Reverend John H. Mackerras of Kingston, in the Province of Ontario, William Darling, Esquire, and Alexander Mitchell, both Merchants of the City of Montreal aforesaid (Respondents in the Court below) - - Respondents.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 67.
Bail Bond,
filed 30th
Sept. 1880.
—continued.

10

Be it Remembered that on the thirtieth day of September, in the year of our Lord one thousand eight hundred and eighty, at the said city of Montreal, before me, the Honorable Thomas Kennedy Ramsay, one of the Justices of the Court of Queen's Bench for Lower Canada, came and appeared James S. Hunter, notary, and Joseph Hickson, Grand Trunk general manager, both of the city and district of Montreal, who declare themselves jointly and severally bound and liable unto and in favor of Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland, the Reverend Daniel M. Gordon, Reverend John Cook, Reverend John Jenkins, Reverend Gavin Lang, Sir Hugh Allan, John L. Morris, Robert Dennistoun, William Walker, the Rev. John H. Mackerras, William Darling and Alexander Mitchell, their heirs, assigns and representatives, in the sum of two thousand dollars, current money of Canada, for costs to be made and levied of the several goods and chattels, lands and tenements of them, the said James S. Hunter and Joseph Hickson, to the use of the said Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland, the Reverend Daniel M. Gordon, Reverend John Cook, Reverend John Jenkins, Reverend Gavin Lang, Sir Hugh Allan, John L. Morris, Robert Dennistoun, William Walker, the Rev. John H. Mackerras, William Darling and Alexander Mitchell, their heirs, assigns and representatives, and more specially to be made and levied of the following property belonging to the said Joseph Hickson, to wit, a lot of land bearing the number one thousand and twenty-two (No. 1022) on the official cadaster plan of the parish of Montreal.

Whereas judgment was rendered in the said cause in the said Court of Queen's Bench on the nineteenth day of June, one thousand eight hundred and eighty, on the appeal instituted in this cause, and whereas the said The Reverend Robert Dobie has obtained leave to appeal therefrom to Her Majesty in Her Privy Council;

Now the condition is such that if the said The Reverend Robert Dobie do prosecute effectually the said appeal to Her Majesty, and pay unto the said Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland, the Reverend Daniel M. Gordon, Reverend John Cook, Reverend John Jenkins, Reverend Gavin Lang, Sir Hugh Allan, John L. Morris, Robert Dennistoun, William Walker, the

RECORD. Reverend John H. Mackerras, William Darling and Alexander Mitchell, such costs and damages as may be awarded unto them by Her Majesty in the event of the said judgment of the said Court of Queen's Bench being confirmed, then the present obligation shall be null and void, otherwise the same to be and remain in full force and value.

*In the
Court of
Queen's
Bench.*

No. 87.
Bail Bond,
filed 30th
Sept. 1880.
—continued.

And the said James S. Hunter and Joseph Hickson have signed.

J. HICKSON.

J. S. HUNTER.

Taken and acknowledged before me at the City of Montreal the day and year first above written, the said parties having first duly justified their solvency. 10

T. K. RAMSAY, J. Q. B.

The said Joseph Hickson being duly sworn, doth depose and say that he is the lawful owner and proprietor of the real estate above described, and that the same is worth the sum of two thousand dollars currency, over and above all charges and hypothecs, and he hath signed.

J. HICKSON.

Sworn before me at Montreal this thirtieth day of September, one thousand eight hundred and eighty.

T. K. RAMSAY, J. Q. B.

The said James S. Hunter being duly sworn doth depose and say that he is worth the sum of two thousand dollars currency over and above what would pay his just and lawful debts and he hath signed.

J. S. HUNTER.

Sworn before me at Montreal, this thirtieth day of September, one thousand eight hundred and eighty.

T. K. RAMSAY,
J. Q. B.

(Endorsed.)

Bail Bond—Filed 30th September 1880.

(Paraphed) L. W. M. 30

DOCUMENT XIII.

Canada,
Province of Quebec, }
District of Montreal.

Court of Queen's Bench,
Appeal Side.

Jurisdiction of Her Majesty's Privy Council.

The Reverend Robert Dobie, - - - Petitioner and Appellant.
and

"The Board for the Management of the Temporalities Fund of
the Presbyterian Church of Canada in connection with
the Church of Scotland, *et al.*, - - - Respondents.

10

To JOHN L. MORRIS, Attorney for said Respondents.

Sir,—Take notice that on Monday the eighth day of November instant, at the hour of ten of the clock in the forenoon, the said Appellant will apply to his Honor the Chief Justice or to any one of the Honorable Justices of the Court of Queen's Bench for Lower Canada (Appeal Side) sitting in chambers in the Court House in the City of Montreal, to fix and determine what shall constitute the Record and Transcript in appeal from the said Court of Queen's Bench to Her Majesty's Privy Council, and to regulate and provide what Exhibits, Documents or matters shall be excluded therefrom.

20 (1.) Because the said record in the said case contains several copies of the same documents :

(2.) Because the said record contains formal documents not necessary to be set out in the transcript for appeal.

(3.) Because the said record contains several books fyled as exhibits, the contents of which it would be exceedingly expensive to set out at length, but extracts of which relied upon by either party can be conveniently agreed upon and determined.

30 (4.) Because to print the entire record, exhibits, and documents connected with the case would not only cause very considerable and unnecessary expense, but would involve the printing of several volumes and books, by far the greater portion of which are irrelevant to the issues.

(5.) Because many of the books and documents forming part of the said record may be excluded from the said record without any injustice to the pretensions of either party, and without in any way infringing upon the issues to be presented for adjudication to Her Majesty's Judicial Committee.

30

Montreal 6th November 1880.

D. MACMASTER,
Attorney for Appellant.

(Endorsed.)

40 Notice of day fixed to prepare Record.—Fyled 8th Nov. 1880.
(Paraphed) L. W. M.

RECORD.

In the
Court of
Queen's
Bench.

No. 68.
Notice of
day fixed to
prepare
Record, filed
8th Nov.
1880.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 68A.
Notice to fix
case for
appeal, filed
11th Nov.
1880.

Canada,
Province of Quebec, }
District of Montreal.

Annexed to the foregoing petition is the following document:—

DOCUMENT XIII.A.

In the Court of Queen's Bench.
Appeal Side.

Jurisdiction of the Privy Council.

Revd. Robert Dobie, - - - - - Appellant.

vs

"Board for the Management of the Temporalities Fund
of the Presbyterian Church of Canada in con-
nection with the Church of Scotland," *et al* - - Respondents.

10

The parties consent that the following books, papers and documents may be omitted from the transcript record for appeal to Her Majesty's Privy Council with the exception of such parts thereof as may be indicated and subject to the agreement and consent herein contained.

The whole of Exhibit containing "Acts and Proceedings of Synod of Presbyterian Church of Canada in connection with the Church of Scotland, 8th June 1875, with the exception of pages thirty-four, thirty-five and thirty-six commencing with the words: "Arrangements for consummation of Union," and ending with the words: "John Macdonald," and with the exception of the page 20 referred to by witnesses as page A in said Exhibit between pages forty and forty-one thereof, commencing with the words: "At Montreal," and ending with the words: "Church in Canada."

The whole of Respondents' Exhibit 3^d being copy of *Quebec Gazette* of date 19th June 1875, except that portion on p. 1246 commencing with the words: "Notice is hereby," and ending with the words: "denomination of Chris" and that part of page 1247 ending with the figures "3248."

All the books filed by either party as exhibits, may be omitted from the printed transcript record, with however this express understanding—that all said books except Respondents' Exhibit 3^d which contains the same Minutes, Acts and 30 Proceedings of the Synod as are contained in the first volume of Appellant's Exhibit "BBB," from 1831 to 1854, shall be sent with the transcript to be prepared and forwarded to Her Majesty's Privy Council, and that all books so filed and forwarded shall avail for the purposes of this appeal in the same manner and to the same extent as if the same were printed at length and incorporated in the regular printed case.

All Bailiffs returns may be omitted. Depositions may be inserted as they

are printed in the present appeal facts without headings and endings, or jurats, RECORD.
save those in facts.

Montreal, 11th November 1880.

D. MACMASTER,
Attorney for Appellants.

*In the
Court of
Queen's
Bench.*

JOHN L. MORRIS,
Attorney for Respondents,

excepting Sir Hugh Allan and Rev. Gavin Lang.

D. E. BOWIE,
Attorney for Respondents

Sir Hugh Allan and the Revd. Gavin Lang.

No. 68A.
Notice to fix
case for
appeal, filed
11th Nov.
1880.
—continued.

10

The foregoing consent and agreement arrived at between the parties submitted to and approved by me.

Montreal, 11th November 1880.

A. A. DORION,
C. J. Q. B.

(Endorsed.)

Notice to fix the case for appeal to Privy Council by consent.—Filed 11th November 1880.

(Paraphed.) L. W. M.

DOCUMENT XIV.

20 Canada, } In the Court of Queen's Bench,
Province of Quebec, } (Appeal Side).

No. 144.

The Reverend Robert Dobie, - - - - - Appellant.
and

"Board for the Management of the Temporalities Fund of
the Presbyterian Church of Canada in connection
with the Church of Scotland" *et al.* - - - Respondents.

No. 69.
List of
Documents
and Papers
to be in-
serted in the
Transcript,
filed 11th
Nov. 1880.

LIST OF DOCUMENTS AND PAPERS TO BE INSERTED IN THE TRANSCRIPT.

- Transcript.
- 30 No. 1. Petition and Order for Injunction and Writ of Injunction.
3. Petitioner's Exhibit No. 1.
4. " " 2.
5. " " 3.
6. " " 4.
8. Appearance for Respondents.
9. " Respondent, Sir H. Allan.
10. " Respondent, Rev. Gavin Lang.
13. Petition and Affidavits by Respondents that Petitioner be ordered to
increase his Security to the amount of \$159,700.00.
40 14. Answer to Petition and Affidavit.

RECORD. No. 15. Consent of Petitioner to Re-investment, &c.

16. Affidavit of James Croil.

17. " Alex. McGibbon.

18. " Rev. Gavin Lang.

19. Notice to Respondents that additional security will be given.

19A. Notice that Security for costs will be given.

20. Notice that Security for costs has been given.

21. Notice that additional Security has been put in by Petitioner.

22. Petition of Respondents that order for Writ of Injunction &c., be dissolved or suspended, and affidavits annexed. 10

The Acts and Proceedings of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland. Session XLIX. Begun at Montreal, 8th June 1875. Kingston; Printed by William Bailie. 1875.

—Extract—

From "Arrangements for Consummation of Union" inclusively page 34 to "By-Law of Temporalities Board" exclusively page 36.

—Extract—

From "At Montreal" inclusively page — to "Canada" inclusively.

23. Answers to Petition to quash Injunction. 20

24. Affidavit of Douglas Brymner.

25. " Rev. Robert Dobie.

26. " Robert Burnet.

27. " Revds T. McPherson and J. Davidson.

28. " Rev. Gavin Lang.

29. " Sir Hugh Allan.

30. " Mr. Justice Miller.

31. " Rev. Robert Campbell.

32. " James Croil.

33. " Rev. John Jenkins. 30

34. Exception to 3 Affidavits filed by Respondents.

35. Demand of plea of Respondents, except Rev. G. Lang and Sir Hugh Allan.

36. Declaration of Rev. Gavin Lang.

37. " Sir Hugh Allan.

38. Petitioner's List of Exhibits.

41. Exhibit M.N. (Protest).

50. Petition for deposit.

52. Exception to Judgment.

53. Answers to Pleas. 40

54. Respondents' answer to Petitioner's answer to Respondents' plea.

55. Deposition of Rev. Gavin Lang for Petitioner.

56. Admissions of Parties.

58. Respondents' Exhibit 3¹.

59. " " 3².

—Extract—

From "Notice is hereby given" inclusively to "3248" inclusively.

No. 69.
List of
Documents
and Papers
to be in-
serted in the
Transcript,
filed 11th
Nov. 1889.
—continued.

60. Deposition of Rev. John McDonald, for Petitioner.
 62. " D. Brymner for Petitioner.
 63. " Rev. Gavin Lang.
 64. " Sir Hugh Allan.
 65. " James Croil.
 66. " J. S. Mullan, for Respondents.
 67. " Hugh Mackerras.
 68. " Rev. John Jenkins.
 69. " Rev. Robert Campbell.
 70. " Rev. G. Lang.
 71. Petitioner's List of Exhibits.
 72½. " Exhibit X.
 73. " " Z1.
 74. " " Z2.
 75. " " Z3.
 77. " " Z5.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 60.
List of
Documents
and Papers
to be in-
serted in the
Transcript,
filed 11th
Nov. 1880.
—continued.

Besides Documents which ordinarily form part of the Transcript, viz :

- Writ of Appeal.
 Reasons of Appeal.
 Answers to Reasons of Appeal.
 Appellant's Case.
 Respondents' Case.
 Bail Bond.
 Proceedings entered in the Register.

Montreal, 11th November, 1880.

D. MACMASTER,
 Attorney for Appellant.

J. L. MORRIS,
 Attorney for Respondents pleading.

(Endorsed.)

List of Documents and Papers to be inserted in the Transcript.—Filed 11th
 Nov. 1880.

(Paraphed) L. W. M.

RECORD.

DOCUMENT XV.

*In the
Court of
Queen's
Bench.*

Canada, }
Province of Quebec. }
No. 144.

Court of Queen's Bench,
Appeal Side.

No. 70.
List of
Exhibits
(Books)
sent to the
Registrar of
Her Majesty's
Privy
Council,
according
to order.

The Reverend Robert Dobie, - - - - - Appellant.

and

"The Board for the Management of the Temporalities Fund of
the Presbyterian Church of Canada in connection with
the Church of Scotland, *et al.*, - - - - - Respondents.

LIST OF EXHIBITS (Books) sent to the Registrar of Her Majesty's Privy Council, according to order given by the Honorable Sir Antoine Aimé Dorion, Chief Justice of the Court of Queen's Bench, on the 11th November, 1880.

Exhibit.

The Acts and Proceedings of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland—Session XLIX—Begun at Montreal, 8th June, 1875. Kingston, Printed by William Bailie, 1875.

Schedule No. 39. Exhibit BBB. Filed 21st March, 1879.
Minutes, Church of Scotland in Canada, 1831-54.

 (This volume of the Acts and Proceedings being the same as the one filed as Respondents' Exhibit 3,3, this latter was not transmitted to the 20 Registrar of Her Majesty's Privy Council pursuant to order.)

Schedule No. 39. Exhibit BBB. Filed 21st March, 1879.
Minutes, Church of Scotland in Canada, 1855-69.

Schedule No. 39. Exhibit BBB. Filed 21st March, 1879.
Minutes, Church of Scotland in Canada, 1870-75.

Schedule No. 40. Exhibit LL. Filed 21st March, 1879.
Digest of the Minutes of the Synod of the Presbyterian Church of Canada, with a Historical Introduction, and an Appendix of Forms and Procedure. By the Rev. Alex. F. Kemp, St. Gabriel Street Church, Montreal. "Let all things be done decently and in order."—1 Cor. xiv., &c. Montreal, 30 Printed and Published by John Lovell; Sold by E. Dawson & Son, Montreal; D. McLellan, Hamilton; and R. & A. Miller, Toronto. 1861.

Schedule No. 42. Exhibit CC. Filed 21st March, 1879.
Faults and Failures of the late Presbyterian Union in Canada, by James Glas Brymner, London, Ont. London, Free Press Printing Company, Richmond-Street—1879.

Schedule No. 43. Exhibit EE. Filed 21st March, 1879.
Acts and Proceedings of the First General Assembly of the Presbyterian Church in Canada—Montreal, 15th-17th June, 1875. Toronto: Printed at the "Presbyterian" Printing Office, 102 Bay Street. 1875.

Schedule No. 44. Exhibit KK. Filed 21st March, 1879.

The Home and Foreign Missionary Record for the Church of Scotland—By authority of the Committees of the General Assembly—8.

RECORD.

*In the
Court of
Queen's
Bench.*

Schedule No. 45. Exhibit FF. Filed 21st March, 1879.

A Historical and Statistical Report of the Presbyterian Church of Canada, in connection with the Church of Scotland, for the year 1866. Second edition—Printed by order of the Synod—Montreal: Printed by John Lovell, St. Nicholas Street. 1868.

No. 70.
List of
Exhibits
(Books)
sent to the
Registrar of
Her Majesty's Privy
Council,
according
to order.
—continued.

Schedule No. 46. Exhibit DD. Filed 21st March, 1879.

10 Cyclopædia of Religious Denominations: Containing authentic accounts of the different creeds and systems prevailing throughout the world—Written by members of the respective bodies. Third edition. London and Glasgow: Richard Griffin and Company, Publishers to the University of Glasgow.

Schedule No. 72. Exhibit PP. Filed 17th July, 1879.

Styles of Writs, and Forms of Procedure, in the Church Courts of Scotland. By the Church Law Society of Edinburgh. Edinburgh: Edinburgh Printing and Publishing Company. Glasgow: J. Smith & Son: Aberdeen: Brown & Co. MDCCCXXXVIII.

20 Schedule No. 76. Exhibit Z4. Filed 1st August, 1879.

The Confession of Faith—The Larger and Shorter Catechisms, with the Scripture-Proofs at large—Together with the sum of Saving Knowledge, (contained in the Holy Scriptures and held forth in the said Confession and Catechisms) and practical use thereof.

Covenants, National and Solemn League—Acknowledgment of Sins, and Engagement to Duties—Directories for Publick and Family Worship.

Form of Church Government, etc. Of Publick Authority in the Church of Scotland—With Acts of Assembly and Parliament relative to and approbative of the same.

30

Printed by authority. London, T. Nelson and Sons, Paternoster Row; Edinburgh, and New York. MDCCCLVIII.

Schedule No. 78. Exhibit Z6. Filed at Enquête, July 11th, 1878.

Pastoral Charge of the Rev. Dr. Jenkins, as Moderator of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland in 1869—in which, at page 5—he styles the Presbyterian Church of Canada, in connection with the Church of Scotland as the "Church of Scotland."

RECORD.

*In the
Court of
Queen's
Bench.*

No. 71.
Certificate
of Clerk of
Appeals of
Her Majesty's
Court of Queen's
Bench.

Canada, }
Province of Quebec. }

In the Court of Queen's Bench.
Appeal Side.

I, Louis F. W. Marchand, Clerk of Appeals of Her Majesty's Court of Queen's Bench for Lower Canada, do hereby certify that the four hundred and thirty-five foregoing and present pages contain true and faithful copies of all and every the original papers, documents, and principal proceedings, and of the Transcript of all the Rules, Orders, Proceedings and Judgments of Her Majesty's Superior Court for Lower Canada, sitting in the City of Montreal, in the Province of Quebec, transmitted into my office as the Record of the said Superior Court, in the matter therein lately pending and determined wherein The Reverend Robert Dobie, Petitioner in the Superior Court, was Appellant in the Court of Queen's Bench (Appeal Side), and The Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland, The Reverend Daniel M. Gordon, Reverend John Cook, Reverend John Jenkins, Reverend Gavin Lang, Sir Hugh Allan, John L. Morris, Robert Denistoun, William Walker, The Reverend John H. Mackerras, William Darling, and Alexander Mitchell, Respondents in the Superior Court, were Respondents in the Court of Queen's Bench (Appeal Side), and also of all the principal proceedings and documents had and filed in the said Court of Queen's Bench (Appeal Side), and of all and every the entries in the Register of the said Court of Queen's Bench, and of the Judgment therein given on the Appeal instituted before the said Court of Queen's Bench by the said The Reverend Robert Dobie.

In faith and testimony whereof, I have to these presents set and subscribed my signature and affixed the seal of the said Court of Queen's Bench, (Appeal Side).

Given at the City of Montreal, in that part of the Dominion of Canada called the Province of Quebec, this day of
in the year of our Lord one thousand eight hundred and eighty-one.

L. W. MARCHAND.

Clerk's fees on transcript of Record.

30

Seal.
Court of Queen's Bench
Lower Canada.

I, the undersigned, the Honorable Sir Antoine Aimé Dorion, Knight, Chief Justice of the Court of Queen's Bench for Lower Canada, in the Province of Quebec, do hereby certify that the said Louis François Wilfrid Marchand, Esquire, is the Clerk of the Court of Queen's Bench, on the Appeal Side thereof, and that the signature "L. W. Marchand" subscribed at the foot of each of the foregoing pages and of the certificate above written is his proper signature and handwriting.

I do further certify that the said Louis François Wilfrid Marchand, as such Clerk, is the keeper of the Records of the said Court, and the proper officer to certify the proceedings of the same on the Appeal Side, and that the seal above set, is the seal of the said Court, in the Appeal Side, and was so affixed under the sanction of the Court.

In testimony whereof, I have hereunto set my hand and seal at the City of Montreal, in the said Province, the day of _____ in the year of our Lord one thousand eight hundred and eighty-one, and of Her Majesty's reign the forty-fourth.

A. A. DORION,
Chief Justice,
Queen's Bench Province of Quebec.

RECORD.

—
In the
Court of
Queen's
Bench.

—
No. 72.
Certificate
of Chief
Justice of
the Court
of Queen's
Bench.



RECORD.

INDEX of all the PAPERS and DOCUMENTS composing the RECORD in
this CAUSE.

*In the
Court of
Queen's
Bench.*

No. 73.
Index of
Papers com-
posing the
Record in
this cause.

No.			PAGE.
I.	Præcipe for Writ of Appeal - - - - -	Omitted.	
II.	Writ of Appeal - - - - -	-	2
	<i>Schedules annexed to the Writ.</i>		
1	Petition and Order for Injunction and Writ of Injunction - - -	-	16
2	Petitioners' List of Exhibits - - - - -	Omitted.	
3	Affidavit of Douglas Brymner (Petitioner's Exhibit No. 1, filed in sup- port of Petition for Writ of Injunction, 30th December, 1878)	-	39 10
4	Affidavit of the Rev. Gavin Lang (Petitioner's Exhibit No. 2, filed in support of Petition for Writ of Injunction, 30th December 1878) - - - - -	-	41
5	Affidavit of the Rev. William Simpson (Petitioner's Exhibit No. 3, filed in support of Petition for Writ of Injunction, 30th De- cember, 1878) - - - - -	-	42
6	Security for costs (Petitioner's Exhibit No. 4) - - - - -	-	43
7	Petition, Order and Writ of Injunction - - - - -	Omitted.	
-	" " " " - - - - -	Omitted.	
-	" " " " - - - - -	Omitted.	20
8	Appearance for Respondents, filed 31st January, 1879 - - - - -	-	45
9	Appearance for Respondent, Sir Hugh Allan, filed 31st January, 1879.	-	45
10	Appearance for Respondent, Rev. Gavin Lang, filed 31st January, 1879.	-	46
11	Consent that Appearance of J. L. Morris do not apply to Rev. G. Lang and Sir Hugh Allan and withdrawal of Appearance to that effect.	Omitted.	
12	Motion for Security for costs - - - - -	Omitted.	
13	Petition by Respondents that Petitioner be ordered to increase his security to the amount of \$159,700.00, and notice, filed 5th February 1879 - - - - -	-	46
-	Affidavit of Wm. Darling, filed 5th February 1879 - - - - -	-	48 30
-	Affidavit of James Croil, filed 5th February 1879 - - - - -	-	50
14	Answer to Petition, 12th February 1879 - - - - -	-	52
-	Affidavit of Robert M. Esdaile - - - - -	-	53
-	Affidavit of Curtis N. D. Osgood - - - - -	-	54
15	Consent of Petitioner to re-investment, filed 14th February 1879	-	55
16	Affidavit of James Croil, on part of Respondents, filed 14th February 1879 - - - - -	-	56
17	Affidavit of Alex. McGibbon, filed 15th February 1879 - - - - -	-	56
18	Affidavit of Rev. Gavin Lang, filed 15th February 1879 - - - - -	-	57
19	Notice to Respondents that additional Security will be given, filed 28th February 1879 - - - - -	-	58 40
19A	Notice that Security for costs will be given, filed 28th February 1879	-	59
20	Notice that Security for costs has been given, filed 28th February 1879	-	60
21	Notice that additional Security has been put in by Petitioner, filed 28th February 1879 - - - - -	-	60
22	Petition of Respondents that order for Writ of Injunction &c. be dis- solved or suspended, filed 3rd March 1879 - - - - -	-	61
-	Affidavit of the Rev. John Hugh Mackerras, - - - - -	-	65
-	Affidavit of Rev. James S. Mullan, - - - - -	-	71
-	Affidavit of the Rev. John Cook, D.D., - - - - -	-	73 50
-	Affidavit of the Rev. John Jenkins, D.D., - - - - -	-	75
-	Affidavit of the Rev. Robert Campbell, - - - - -	-	79
23	Answer to Petition to quash Injunction, filed 14th March 1879 - - -	-	83
24	Affidavit of Douglas Brymner, filed 14th March 1879 - - - - -	-	89
25	Affidavit of the Rev. Robert Dobie, filed 14th March 1879 - - - - -	-	98
26	Affidavit of the Rev. Robert Burnet, filed 14th March 1879 - - - - -	-	108

		RECORD.	
PAGE.	No.		PAGE.
	27	Affidavit of the Rev. Thomas Macpherson and the Rev. John Davidson, filed 14th March 1879 - - - - -	109
	28	Affidavit of the Rev. Gavin Lang, filed 14th March 1879 - - - - -	112
2	29	Affidavit of Sir Hugh Allan, filed 14th March 1879 - - - - -	117
	30	Affidavit of Mr. Justice Thomas Miller, filed 14th March 1879 - - - - -	118
16	31	Affidavit of the Rev. Robert Campbell, filed 28th March 1879 - - - - -	120
	32	Affidavit of James Croil, filed 28th March 1879 - - - - -	125
	33	Affidavit of the Rev. John Jenkins, D.D., filed 4th April 1879 - - - - -	127
39 10	34	Exception to three Affidavits filed by Respondents, filed 5th April 1879 - - - - -	128
	35	Demand of Plea of Respondents except the Rev. Gavin Lang and Sir Hugh Allan - - - - -	Omitted.
	—	Plea, filed 11th March 1879 - - - - -	128
41	36	Declaration of the Rev. Gavin Lang, filed 8th March 1879 - - - - -	134
	37	Declaration of Sir Hugh Allan, filed 8th March 1879 - - - - -	135
42	38	Petitioner's List of Exhibits, - - - - -	136
43	39	Three Volumes comprising the Minutes from 1831 to 1875 of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland. (Petitioner's Exhibit BBB, filed 21st March 1879) (<i>Books</i>) - - - - -	Omitted by consent.
	20	39 The first of these 3 volumes—1831–54—is also Respondents' Exhibit 3, ³ - - - - -	Omitted by consent.
45	40	Digest of the Synod Minutes of the Presbyterian Church of Canada. (Petitioner's Exhibit LL, filed 21st March 1879) - - - - -	Omitted by consent.
46	41	No. 5597. 15th June 1875. Protest—at the request of Joseph Hickson, <i>et al.</i> , against The Moderator of the Presbyterian Church of Canada in connection with the Church of Scotland. (Petitioner's Exhibit MN., filed 21st March, 1879) - - - - -	137
46	42	Faults and Failures of the late Presbyterian Union in Canada. By Douglas Brynmor (<i>Book</i>). (Petitioner's Exhibit CC, filed 21st March 1879) - - - - -	Omitted by consent.
48 30	43	Acts and Proceedings of the First General Assembly of the Presbyterian Church in Canada. (Petitioner's Exhibit EE, filed 21st March 1879) (<i>Book</i>) - - - - -	Omitted by consent.
50	44	Missionary Record 8—Church of Scotland, containing announcement of the appointment of Petitioner as a minister. (Petitioner's Exhibit RR, filed 21st March 1879) (<i>Book</i>) - - - - -	Omitted by consent.
52	45	Historical and Statistical Report, published by order of the said Synod of the Presbyterian Church of Canada in connection with the Church of Scotland. (Petitioner's Exhibit FF, filed 21st March 1879) (<i>Book</i>) - - - - -	Omitted by consent.
53	46	Cyclopædia of Religious Denominations containing authentic accounts of the different Creeds and Systems prevailing throughout the World. Written by members of the respective Bodies. (<i>Book</i>) (Petitioner's Exhibit DD, filed 21st March 1879). - - - - -	Omitted by consent.
54	47	Notice of fixing a day for Petitioner to adduce his evidence - - - - -	Omitted.
55	48	Order of Judge appointing day for Petitioner's Enquête, filed 2nd June 1879 - - - - -	Omitted.
56	49	Inscription upon the <i>Rôle d'Enquête</i> , filed 29th Nov. 1879 - - - - -	Omitted.
57 40	50	Petition for Deposit and Notice thereof, filed 9th June 1879 - - - - -	138
58	51	Continuation of Enquête - - - - -	Omitted.
59			
60			
61			
65			
71			
73 50			
75			
79			
83			
89			
98			
108			

RECORD.

In the Court of Queen's Bench.
No. 73.
Index of Papers composing the Record in this cause.
—continued.

RECORD.

	No.		PAGE.
<i>In the</i>	52	Respondents' Exception to Judgment rendered this day by the Honorable Mr. Justice Jetté on Petition, filed 14th June 1879 - - -	139
<i>Court of</i>	53	Answer to Pleas, filed 18th June 1879 - - -	140
<i>Queen's</i>	54	Respondents' Answer to Petitioner's Answer to Respondents' Plea, filed 12th April 1879 - - -	145
<i>Bench.</i>	55	Deposition of the Rev. Gavin Lang, produced by Petitioner, filed 25th June 1879 - - -	147
No. 73.	56	Admissions of Parties, filed 27th June 1879 - - -	154
Index of	57	Respondents' Lists of Exhibits, filed with Admissions, 27th June 1879 - - -	Omitted.
Papers com-	58	Copy of Extracts from the Records of the Presbytery of Glengarry, dated at Martintown, June 8th 1878. (Respondents' Exhibit No. 3 ¹ , filed with Admissions 27th June 1879) - - -	10
posing the	59	Copy of <i>Quebec Official Gazette</i> , dated and published at Quebec, 19th June 1875—Extract—(Respondents' Exhibit No. 3 ² , filed with admissions) filed 27th June 1879 - - -	167
Record in	60	Deposition of the Rev. John McDonald, produced by Petitioner, filed June 28th 1879 - - -	168
this cause.	61	Notice to Petitioner to proceed with his evidence, filed 30th June 1879 - - -	169
—continued.	62	Deposition of Douglas Brymner, produced by Petitioner, filed 2nd July 1879 - - -	Omitted.
	63	Deposition of the Rev. Gavin Lang, produced by Petitioner, filed July 2, 1879 - - -	20
	64	Deposition of Sir Hugh Allan, produced by Petitioner, filed July 2, 1879 - - -	184
	65	Deposition of James Croil, produced by Petitioner, filed July 2, 1879 - - -	225
	66	Deposition of James S. Mullan, witness for Respondents, filed 2nd July 1879 - - -	227
	67	Deposition of Rev. John Hugh Mackerras, produced by Respondents, filed July 7, 1879 - - -	229
	68	Deposition of Rev. John Jenkins, D.D., produced by Respondents, filed July 9, 1879 - - -	237
	69	Deposition of Rev. Robert Campbell, produced by Respondents, filed July 15, 1879 - - -	242
	70	Deposition of Rev. Gavin Lang, produced by Respondents, filed July 15, 1879 - - -	30
	71	Petitioner's List of Exhibits, filed 1st August 1879 - - -	277
	72	Styles and Procedure in the Church Courts of Scotland. (Petitioner's Exhibit PP, filed 17th July 1879) (<i>Book</i>) - - -	304
	72 ¹	Blank form of Cheque, used by the Temporalities Board of the Presbyterian Church of Canada in connection with the Church of Scotland. (Petitioner's Exhibit X, filed 1st August 1879) - - -	339
	73	Acts and Proceedings of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, on and since June 15, 1875. (Petitioner's Exhibit Z1, filed 1st August 1879) - - -	345
	74	Letter to the Rev. Gavin Lang, from the Rev. R. H. Muir, on behalf of the Colonial Committee of the Church of Scotland recognizing the Presbyterian Church of Canada in connection with the Church of Scotland. (Petitioner's Exhibit Z2, filed July 2, 1879.) - - -	Omitted by consent.
	75	Letter from Rev. G. W. Sprott to Rev. Gavin Lang. (Petitioner's Exhibit Z3, filed July 2, 1879.) - - -	40
	76	The Confession of Faith and Larger and Shorter Catechisms, containing also the form of Presbyterial Church Government. (<i>Book</i>) (Petitioner's Exhibit Z4, filed July 2, 1879.) - - -	347
			370
			371
			Omitted by consent.
			50

		No.		PAGE.
		77	Extracts from the Acts and Proceedings of the General Assembly of Church of Scotland. (Petitioner's Exhibit Z5, filed 1st August 1879.)	371
		78	Pastoral Charge of the Rev. Dr. Jenkins, Moderator of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland in 1869—in which, at page 5—he styles the Presbyterian Church of Canada in connection with the Church of Scotland, as The "Church of Scotland," 1st August 1879. (<i>Book</i>) (Petitioner's Exhibit Z6, filed at Enquête, July 11, 1879.)	Omitted by consent.
		79	Inscription for merits	Omitted.
		III.	Appearance for Appellants	Omitted.
		IV.	Appearance for Respondents	Omitted.
		V.	Demand of Reasons of Appeal	Omitted.
		VI.	Reasons of Appeal	375
		VII.	Answers to Reasons of Appeal	376
	20	VIII.	Appellants' Case	377
		IX.	Respondents' Case	399
		X.	Transcript	425
		XI.	Inscription	Omitted.
		XII.	Notice of Inscription	Omitted.
			Bail-Bond	428
		XIII.	Notice of day fixed to prepare Record filed 8th Nov. 1880	431
		XIII.A.	Notice to fix case for Appeal, filed	432
		XIV.	List of Documents and Papers to be inserted in the Transcript, filed 11th Nov. 1880	433
	30	XV.	List of Exhibits (Books) sent to the Registrar of Her Majesty's Privy Council, according to order	436
			Certificates	438-9

RECORD.

*In the
Court of
Queen's
Bench.*

No. 73.
Index of
Papers com-
posing the
Record in
this cause.
—continued.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 74.
Judges'
Reasons.

JUDGES' REASONS.

Canada, }
Province of Quebec. }

Court of Queen's Bench,
Appeal Side.

The Reverend Robert Dobie, - - - - - Appellant.
and

"The Board for the Management of the Temporalities
Fund of the Presbyterian Church of Canada in
connection with the Church of Scotland," *et al.*, - Respondents

Judgment rendered at Montreal, the nineteenth day of June, one thousand
eight hundred and eighty.

10

Present :

The Honorable Sir ANTOINE AIMÉ DORION, Knight, Chief Justice.

" " Mr. Justice MONK.

" " Mr. Justice RAMSAY.

" " Mr. Justice TESSIER.

" " Mr. Justice McCORD, *ad hoc*.

OPINION OF SIR ANTOINE AIMÉ DORION, Knight, Chief Justice.

Sir A. A.
Dorion,
Knight,
Chief
Justice.

This is an extremely important case, in which the Appellant by means of a writ of injunction, contests the right of the Respondents to the management of a large amount of property. It involves one of the most intricate questions arising out of the distribution under "The British North America Act of 1867" (commonly called the Confederation Act) of the legislative powers attributed to the Dominion Parliament and to the local or provincial legislatures respectively.

The facts which have given rise to the contestation have been so clearly explained by my learned brother on my right (Mr. Justice Ramsay) that it is unnecessary for me to refer to them.

The question submitted to the court is as to whether the Legislature of the Province of Quebec had the power to amend, as regards that Province, an Act passed by the Parliament of the late province of Canada, that is, of the then United Provinces of Upper and Lower Canada entitled "An Act to incorporate the Board of Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland." It is a question of law to be determined by the provisions of the British North America Act of 1867.

The purpose of the amended Act, as its title indicates, was to incorporate a religious body for the management of the temporalities of their Church, and that of the amending Acts 38 Vict., ch. 62 and 64, is to sanction the union effected by the body so incorporated with three other religious bodies, to authorize them to merge into one common fund the property which belonged to them respectively at the time of their union or which they may hereafter acquire, and to manage it in furtherance of the object of their institution.

40

It is contended on behalf of the Appellant that the original Act of incorporation having been passed by the Parliament of the late Province of Canada, now constituting the Provinces of Ontario and Quebec, and its provisions extending to the two provinces, this original Act is beyond the control of the legislatures of these provinces acting separately and can only be amended or repealed by the action of the Parliament of Canada.

By section 92 of the British North America Act of 1867, the legislative powers conferred exclusively upon the Local Legislatures are defined, and among those powers are to be found at sub-section eleven (11), "The incorporation of
10 "companies with Provincial objects;" at sub-section thirteen (13), "Property
"and civil rights in the Province;" and at sub-section sixteen (16), "Generally
"all matters of a merely local or private nature in the Province."

An Act incorporating a religious body for the purpose of acquiring property and of managing it, for the support of their ministers and of educating young men for the ministry, is undoubtedly an Act conferring a civil right, by giving to the body so incorporated a civil status which it had not before. When the powers imparted by such Act of incorporation apply to one Province only, the incorporation is for provincial purposes and the franchises can only be granted by the Legislature of the Province where those franchises are to be exercised and
20 not by the Dominion Parliament except in a few specified cases. As regards the other Provinces of the Dominion, such a corporation has no other rights in these other Provinces than those which, according to the laws in force in each Province, may be exercised by any foreign corporation.

A religious body so incorporated in one Province might, however, wish to extend its operations and seek to obtain the same corporate rights in one or more of the other Provinces of the Dominion, and it can hardly be contested that each Local Legislature would have the same power to grant to a body already incorporated in one Province the same franchises to be exercised within the limits of its own jurisdiction—and all the Local Legislatures might successively do the
30 same. These corporate rights would not cease to be civil rights nor to have provincial objects for having been successively granted in more than one of the Provinces of the Dominion, and the Dominion Parliament of Canada could not therefore claim to interfere and grant to a society incorporated in Quebec, the same corporate rights in Ontario, under the pretence that the society being already incorporated in Quebec, its operations would extend to more than one Province by the new Act of incorporation, nor could the Dominion Parliament assume on the same ground to repeal or amend an Act incorporating a society in one Province with a view to extend its repealed or amended provisions to two or more of the Provinces. There is no power given by the Confederation Act to the
40 Dominion Parliament to amend or repeal an Act passed by a Local Legislature within the limits of its authority—and there is no concurrent authority conferred in this matter to the Dominion Parliament and to the provincial legislatures. If therefore, the Local Legislatures have the right to incorporate a Church society and confer upon such society corporate rights and franchises within its own Province, this right is exclusive and cannot be exercised by the Dominion Parliament.

If the right to incorporate a religious society, such as the one concerned in

RECORD.

*In the
Court of
Queen's
Bench.*

No. 74.
Judges'
Reasons.

Sir A. A.
Dorion,
Knight,
Chief

Justice.
—continued.

RECORD. this case, belongs to the Local Legislatures, when the incorporation takes place successively in the different Provinces, it is clear that the several Legislatures may impose different conditions on the incorporated body—or may even refuse an Act of incorporation altogether. Let us suppose that separate charters with different conditions had been granted in several of the Provinces and refused in the others—on what ground could the Parliament of Canada interfere to make the same provisions for every Province or to extend the powers of the corporation to the Provinces which might already have refused to grant such powers.

No. 74.
Judges'
Reasons.

Sir A. A.
Dorion,
Knight,
Chief
Justice.
—continued.

The British North America Act was passed for the very purpose of allowing each Province to regulate its own internal affairs, including civil rights and in- 10 corporations for Provincial objects, without interference on the part of the representatives of the other Provinces through the Dominion Parliament. It would be a mere evasion of the plain tenor and object of the Act, to say that the Dominion Parliament could interfere in matters purely Provincial, merely because two or more of the Local Legislatures had adopted the same legislation, or what would be more obnoxious still, because they had refused to do it. It has been held, and I believe without a dissenting voice, that the Dominion Parliament could not grant to the Orange Society an Act of incorporation with franchises applying to the whole Dominion, and that Local Legislatures could alone create 20 such corporations for their respective Province, and bills for that purpose have accordingly been introduced and discussed in the Legislature of Ontario during several successive sessions.

The Supreme Court on a reference from the Senate has also decided that a Bill to incorporate the Christian Brothers as a body of teachers for the whole Dominion was beyond the powers of the Parliament of Canada (Journal of the Senate 1876, pp. 155, 204). This shows that under the provisions of the Confederation Act, civil rights and Provincial objects are not to be determined by the extent of territory to which interested parties may wish to apply the legislative action of the Parliament of Canada, but by the character of such rights 30 and objects.

A society incorporated for certain objects in the Province of Quebec would by such incorporation acquire civil rights in this Province for provincial objects. A similar society incorporated in Ontario would have provincial objects in Ontario, and if the same society was incorporated both in Quebec and in Ontario, the rights granted to such corporation in each Province would still be civil rights and its objects would not cease to be provincial as regards each Province, because there would be only one society incorporated in the two Provinces instead of two.

But it is contended that the Imperial Parliament having expressly excluded by sub-section ten of section ninety-two (92) of the Confederation Act from the 40 jurisdiction of the Local Legislatures, all "lines of steam or other ships, railways, "canals, telegraphs and other works and undertakings connecting the Province "with any other or others of the Provinces, or extending beyond the limits of "the Province," has shown its intention of conferring on the Parliament of Canada powers of legislation in all matters affecting more than one Province.

The inference I draw from this enactment is quite different and is adverse to the pretensions of the Appellant. This sub-section ten (10) contains an excep-

tional disposition affecting works and undertakings which could hardly create any irreconcilable sectional feeling and controversy, and which it was thought necessary, on account of their general importance, to submit to the control of the Dominion Parliament. The incorporation of a religious society is not included in this sub-section, and therefore not comprised in its exceptional disposition. If this exception concerning railways, canals, telegraphs and other similar works had not been made, they would have fallen under the general rule, and all such works made in each Province would have been a Provincial work, subject to Provincial legislation and control. To show more clearly that the Imperial Parliament intended to place the legislation on these works and undertakings on a different footing than other purely local subjects of legislation, this very sub-section ten (10) also excludes from Provincial legislation all "such works, that is, lines of steamers, railways, &c., as, although wholly situated within the Province, should be declared by the Parliament of Canada, either before or after their execution, to be for the general advantage of Canada or for the advantage of two or more of the Provinces." No such power is given by the Act on any other subject of legislation falling within the authority of the Local Legislature, and this purely exceptional provision cannot be extended to other matters not enumerated in this sub-section ten (10). There is therefore no more reason for saying that the Dominion Parliament can incorporate a religious society because the promoters of the measure wish to extend its operations to two or more Provinces, than there would be for saying that it could declare that a corporation already existing in one of the Provinces is for the advantage of two or more Provinces, and therefore subject to its legislative control.

It is argued that the statutes now under consideration are not to create a new corporation, but to alter the character and conditions of an existing corporation under a statute passed by the Parliament of the late Province of Canada, the provisions of which applied equally to the Provinces of Upper and of Lower Canada; and that the Local Legislature of the Province of Quebec having no right to repeal or alter an Act affecting the late Province of Upper Canada, now constituting the Province of Ontario, the amendments passed by the Legislature of Quebec would have this effect, that a corporation originally established for the two Provinces, under the same Act and the same regulations, would now be governed by different rules and even by different Boards in each Province.

Although this difficulty cannot now arise with regard to the corporation represented by the Respondents, since we know that the Legislature of the Province of Ontario has also legislated to the same effect as that of the Province of Quebec, yet it must be admitted that such might have been the result of the amending Acts, and we must be prepared to meet this apparent difficulty.

It will hardly be contended that the Local Legislatures of the Provinces of Ontario and Quebec have not the power to amend or repeal altogether the Acts passed by the late Province of Canada relating to civil rights or local matters in each Province. It is true that the statutes of the late Province of Canada which were in force when the Confederation took place are continued in Ontario and Quebec by section 129 of the Confederation Act, but subject "to be repealed, abolished or altered by the Parliament of Canada or by the Legislature of the respective Province, according to the authority of the Parliament or of that

RECORD.

*In the
Court of
Queen's
Bench.*

No. 74.

Judges'
Reasons.

Sir A. A.
Dorion,
Knight,
Chief
Justice.

—continued.

RECORD. "Legislature under this (the Confederation) Act." We have seen that the authority to pass laws relating to civil rights is vested in the Local Legislatures. This section (129), therefore, expressly authorises the Local Legislatures to repeal, abolish or alter any statute of the Province of Canada relating to civil rights in the Province to which these Legislatures respectively appertain.

*In the
Court of
Queen's
Bench.*

No. 74.
Judges'
Reasons.

Sir A. A.
Dorion,
Knight,
Chief
Justice.

—continued.

The altering or repealing of such an Act by one Legislature only, would not affect its operation in the other Province; and taking the case of a corporation like that of St. Andrew's Church, such a corporation might continue to subsist in one Province and cease in the other. This, however, is a necessary consequence of the authority given to each Local Legislature to deal exclusively 10 with certain matters in relation to their internal affairs.

The Confederation Act has in effect declared that every statute in force affecting civil rights in the two Provinces of Upper and Lower Canada should be considered as one statute for each of these two Provinces, and with which the Legislature of each Province might deal separately as regards its own Province.

By the British North America Act of 1867 the two Provinces of Upper and Lower Canada, which were before subject to the control of the same legislative authority, were separated and placed in the relation of foreign countries as regards legislation on civil rights, in that sense that the legislation in one Province cannot effect the other. It was the object of the Confederation Act to 20 establish in the several Provinces perfect freedom from any control from the other Provinces in matters coming within their legislative powers.

If inconveniences should result from such an interpretation of the British North America Act of 1867, they are not to be compared to the anarchy which would be created by giving to the Local Legislatures the exclusive authority to legislate generally on all questions of civil rights and by retaining to the Parliament of Canada the absolute right to legislate on the same subjects, whenever they should have been regulated by statutes passed by the late Province of Canada, or whenever it was proposed to subject two or more Provinces composing the Dominion to the same laws, or extend a statute already in force in one 30 Province to another or to the whole Dominion. This would enable the Dominion Parliament to interfere in almost every subject matter of legislation coming within the scope of the legislative power conferred in the Local or Provincial Legislatures. The Dominion Parliament would only have to declare that it is expedient to have the same laws in more than one of the Provinces of the Dominion in order to assume exclusive jurisdiction in such matters.

There would in that case be two codes of laws relating to civil rights in the same Province, the one enacted by the Local Legislature of the Province, and the other by the Dominion Parliament.

The Provincial Legislature might, for instance, pass laws to prevent the 40 accumulation of property in the hands of private corporation, as being contrary to public policy, and at the same time the Parliament of Canada might create new corporations for civil purposes or amend the charters of existing corporations and confer upon them the right to acquire and hold property in mortmain to an unlimited extent; the result being the most inextricable confusion.

We must therefore come to the conclusion that the Parliament of Canada has no right to assume any jurisdiction in matters of civil right, except when

they are necessary incidents of the exercise of some of the powers which are expressly conferred to it by the Confederation Act, or when they come within the exception contained in sub-section ten (10) of section ninety-two (92) already referred to, as the establishing of civil corporations or the amendments of charters of such corporations do not come within either category, they are not within the jurisdiction or the powers of the Parliament of Canada.

After the most careful consideration I have been able to give to this important case, I have come to the conclusion that the Act 38 Vict., chap. 64, to amend the Act intituled "An Act to incorporate the Board of Management of the Temperalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland," is an Act affecting the *status*, the property and the civil rights of the corporation, within the Province of Quebec, and that under sub-sections 11, 13 and 16 of section 92 of British North America Act of 1867, these were within the scope of the legislative authority conferred on the Local Legislature of that Province; that the fact that the Board was incorporated by an Act passed by the Parliament of the late Province of Canada, or that the amended Act applied to the two Provinces of Upper and Lower Canada when the British North America Act was passed, did not alter its character, nor subject the corporation to the control of the Parliament of Canada.

I am therefore of opinion with Mr. Justice Monk of confirming the judgment rendered by the Court below, and as Mr. Justice McCord is also of opinion of confirming the judgment, although on other grounds, the judgment will be confirmed.

I may here add that the Honorable Mr. Blake, when minister of Justice, held, in a report to the Privy Council, that the two statutes passed by the Legislature of the Province of Ontario to make similar provisions to those contained in the Acts now under consideration were not *ultra vires*, except as to certain provisions having reference to a college situate in the Province of Quebec.

The constitutionality of the two Acts passed by the Ontario Legislature has also been sustained by the Court of Chancery in Ontario in the case of Cowan and Wright (23 Grant 616.)

A. A. DORION,
Chief Justice,
Queen's Bench Province of Quebec.

OPINION OF MR. JUSTICE MONK.

I concur in the opinion of the Chief Justice.

S. C. MONK,
J. Q. B.

RECORD.

In the
Court of
Queen's
Bench.

No. 74.
Judges'
Reasons.

Sir A. A.
Dorion,
Knight,
Chief
Justice.

—continued.

Mr. Justice
Monk.

RECORD.

*In the
Court of
Queen's
Bench.*

No. 74.
Judges'
Reasons.

—
Mr. Justice
McCord.

OPINION OF MR. JUSTICE MCCORD.

It is unnecessary for me to state the facts of this case; they are fully set forth in the printed remarks of the learned Judge who rendered the judgment appealed from.

As to the law of the case, resulting from these facts, I am of opinion that the Quebec Act, 38 Vict. c. 64,—in so far as it alters the constitution, composition and succession of the Board for the Management of the Temporalities Fund—is *ultra vires*.

The Board in question is a corporation, created by the statute of the late Province of Canada (now the Provinces of Quebec and Ontario) 22 Vict. c. 66. 10 It was created for the management of a fund derived from, and existing in, both Ontario and Quebec, and belonging to a Church the territorial limits of which embraced both Provinces, and the government or Synodical management of which was not carried on in one Province only but in both. This corporation was not created for a "provincial (Quebec or Ontario) object," according to the terms of the B. N. A. Act, s. 92 §11, nor has it a provincial character. On the contrary it was created in the interest and for the advantage of both Provinces. Being created for two Provinces and applicable to them both it can only be altered by a Parliament having power to legislate for these two Provinces.

The character and scope of this corporation could not cease or change by 20 reason of the fund happening at any time to be invested wholly in one of the Provinces, and of the place of business of the corporation being at that time within that Province. The Board could at any time remove its investments and its place of business to the other Province, and its powers of management were in no wise confined to either Province. The corporation is not a mere accessory of the property which it has to administer, and though the Provincial Legislature may control the "property" (B. N. A. Act, s. 92, §13,) within its limits, and even the "rights" of the corporation in connection with that property, yet it cannot alter the corporation itself. If the legislative control of the property carried with it the power to alter the corporation, the consequence would be that if, as may be 30 the case at any future time, one portion of the fund was invested in Ontario and the other in Quebec, one Provincial Legislature could enact that the corporation should be composed of one set of persons and the other Legislature could ordain that it should consist of another set of members, and the absurd conclusion would be that there could be two Boards of Management.

It seems to me, therefore, that the provisions of the Act 22 Vict., c. 66, respecting the composition and formation of the Board, have not been set aside by the Quebec Act, 38 Vict., c. 64, and are still in force—for it is evident that they could not be set aside by the mere action of the Synod.

It is true, as the Respondents say in their factum, p. 25, that it was the 40 Synod who devised the mode of election and got the Act of incorporation, but it required a competent legislature to *create* the corporation and to *establish* the mode of election of its members, and the Synod could no more change the corporation by altering that mode, than it could in the first instance create the corporation.

Consequently the present Board which, it is admitted, is not composed of the persons or in the manner prescribed by the Act 22 Vic., c. 66, is illegally constituted.

The power of the Synod to alter the composition of a corporation created by statute is one thing, however, and its power to alter the composition of the unincorporated body or Church which it represented and governed is another thing.

The Synod of the Presbyterian Church of Canada in connection with the Church of Scotland had, to my mind, undoubtedly the power to admit new members into the body of the Church and consequently to give them a share in its rights, privileges and property; the other Churches had the same power as regards themselves respectively; and the union of these four Churches was nothing more than the exercise of that power. By admitting new members into its body none of the Churches would cease to exist, it could only become more numerous. The mere change in the name is nothing. The Church had originally named itself and it could name itself again.

As the Presbyterian Church of Canada in connection with the Church of Scotland did not change or cease to exist by admitting new members—that is, by the union—and the evidence, in my opinion, does not show that it changed by any departure from its creed or doctrine, or in any other way, it follows that the Appellant who refused to accede to union and who claimed and still claims to belong to a separate body, is no longer a member of that Church; and as that Church is the Church to whom the Temporalities Fund belongs and on behalf and for the benefit of which it is to be held and managed by the Board, the Appellant has no right, privilege or franchise in connection with the management of the fund in question, and consequently no interest or right to complain of the composition of the Board or to obtain an injunction to restrain all its acts and powers.

He may or he may not have a right to be paid certain moneys out of the fund, but, admitting that he has, his claim is merely that of a creditor, and his only right is to demand and obtain payment. He does not ask this nor does he say that it is refused him.

I need only say in conclusion that my opinion reduces itself to this, that although the Board is not at present legally constituted the Appellant has no interest or right to obtain the injunction he asks for.

THOS. McCORD, *ad hoc*.

J. S. C.

RECORD.

In the
Court of
Queen's
Bench.

No. 74.

Judges'
Reasons.

Mr. Justice
McCord.

—continued.

RECORD.

OPINION OF MR. JUSTICE RAMSAY—(DISSENTING).

*In the
Court of
Queen's
Bench.*

No. 74.
Judges'
Reasons.

Mr. Justice
Ramsay.
(dissenting)

The whole point of this case has been most ably put by the learned Judge in the Court below, and the issue is really brought down to this: whether certain Acts of the Quebec Legislature are within the legislative powers of that body.

The examination of the questions as to the extent of the legislative powers of the general and Local Legislatures frequently gives rise to great difficulty, and the decisions are not, as yet, sufficiently numerous to enable the Courts to derive from them any well settled general principles as a guide. It is, therefore, with some hesitation that I approach the consideration of these intricate questions, to some of which it is impossible to give a totally satisfactory answer. The double enumeration by which it was intended to obviate all doubt as to which Legislature was to possess exclusively this or that power causes embarrassment, and even the use of the word "exclusively" has complicated the difficulty and given rise to interpretations of very various merit. The questions presented in this case appear to me to be more difficult of solution than any that have as yet come before us, as they involve the consideration of a direct conflict between sections 91 and 92 of the B. N. A. Act.

Briefly stated, the facts are these: Prior to 1875, there existed a religious body, known as the Presbyterian Church of Canada in connection with the Church of Scotland. It did not owe its existence to any charter or statute, but it grew out of the settlement in this country of Presbyterians in communion with the Church of Scotland. But if no statute defined precisely the limits, rights and privileges of this body, numerous statutes acknowledged its existence, and the right of its clergy to share in the lands known as the "Clergy Reserves," was admitted. When, by process of legislation, the share of the clergy of the Church of Scotland in Canada became fixed, an Act of the Legislature of United Canada was obtained (22 Vic., cap. 66) to make provision for the management and holding of certain funds of the Presbyterian Church in connection with the Church of Scotland, "now held in trust by certain commissioners, hereinafter named, and for the benefit thereof, and also of such other funds as may from time to time be granted, given, bequeathed, or contributed thereto." The body so incorporated is the Board of Management, the present Respondent.

This Act being still in force, in 1874 numerous clergymen and others, members of different Presbyterian Churches in Canada, deemed it desirable to unite their ecclesiastical fortunes and henceforward to form one body, to be called "The Presbyterian Church in Canada." Nothing could be more lawful or more praiseworthy than the attempt to sink minor differences of opinion in order to attain greater efficiency, but we have not to decide as to motives and intentions. Our duty is deliberately and coldly to decide a question of law. Application was made almost simultaneously to the Legislatures of Ontario and Quebec for authority to give effect to this determination, and to enable the new body to deal with the property of the Churches so united. An Act of the Ontario Legislature (38 Vic., cap. 75) was passed, the preamble of which sets up that:—

"Whereas the Canada Presbyterian Church, the Presbyterian Church of Canada in connection with the Church of Scotland, the Church of the Maritime

Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces, have severally agreed to unite together and form one body or denomination of Christians, under the name of "The Presbyterian Church in Canada;" and the moderators of the General Assembly of the Canada Presbyterian Church, and of the Synods of the Presbyterian Church of Canada in connection with the Church of Scotland, and the Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces, respectively, by and with the consent of the said General Assembly and Synods, have by their petitions, stating such agreement to unite as

10 aforesaid, prayed that for the furtherance of this their purpose, and to remove any obstructions to such union which may arise out of the present form and designation of the several Trusts or Acts of incorporation by which the property of the said Churches, and of the colleges and congregations connected with the said Churches, or any of them respectively, are held and administered or otherwise, certain legislative provisions may be made in reference to the property of the said Churches, colleges and congregations, situate within the Province of Ontario and other matters affecting the same in view of the said Union."

The first section then vests all the property of the different Churches so united in the united body under the name of "The Presbyterian Church in

20 Canada." Then come reservations and modifications of certain rights, and then by section 4 certain legislation in Ontario respecting the property of religious institutions is made applicable to the various congregations in Ontario in communion with the Presbyterian Church in Canada. Section 5 declares that all the property, real and personal, belonging to or held in trust for the use of any college or educational or other institution, or for any trust in connection with any of the said Churches or religious bodies, either generally or for any special purpose or object, shall, from the time the said contemplated union takes place, and thenceforth, belong to and be held in trust for and to the use in like manner of "The Presbyterian Church in Canada." Section 7 then deals specially with Knox

30 College and Queen's College, situate in Ontario, and with "The Presbyterian College" and with "Morrin College," situate in the Province of Quebec. Section 8 deals with the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland, "administered by a Board incorporated by statute of the heretofore Province of Canada." Section 9 deals with the Widows' and Orphans' Fund of "The Canada Presbyterian Church" and "The Presbyterian Church of Canada in connection with the Church of Scotland." Section 10 authorizes the new body to take gifts, devises and bequests; and lastly, section 11 declares that "the union of the said Churches shall be held to take place so soon as the articles of the said union shall have been signed by the

40 moderators of the said respective Churches."

The legislation in the Province of Quebec took the form of two Acts, 38 Vic., cap. 62 and 64, the former respecting the union of certain Presbyterian Churches; the latter is styled "An Act to amend the Act intituled 'An Act to incorporate the Board of Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland.'"

Cap. 62 of the 38 Vic., Quebec, with the exception of the section relating to the Temporalities Fund, is substantially the same as the Ontario Act 38 Vic.,

RECORD.

—
In the
Court of
Queen's
Bench.
—

No. 74.

Judges'
Reasons.
—

Mr. Justice
Ramsay.
(dissenting)
—continued.

RECORD.

—
In the
Court of
Queen's
Bench.

No. 74.
Judges'
Reasons.

—
Mr. Justice
Ramsay.
(dissenting)
—continued.

cap. 74. One or two differences it may, however, be well at once to note. The Ontario Act bestows all the above mentioned privileges on "The Presbyterian Church in Canada;" while the Act of Quebec bestows them on the body so named, "or any other name the said Church may adopt." The Quebec Act declares that the union of the four Churches is to take place from the publication of a notice in the Quebec *Gazette* to the effect that the articles of union have been signed by the moderators of the said respective Churches. The Quebec Act has also a section which, harmless in itself, is suggestive of the utmost confusion of ideas. It is as follows:—"In so far as it has authority to do so, the Legislature of the Province of Quebec hereby authorizes the Dominion Legislature, and the several 10 Legislatures of the other Provinces to pass such laws as will recognize and approve of such union throughout and within their respective jurisdictions."

The other of the Acts of Quebec can hardly be called an amendment of the former Act of the old Province of Canada, for it transfers almost the whole of the Temporalities Fund over to the new Church, and confides its management to a Board constituted in a manner entirely different from the Board under the old Act.

The condition of union in Ontario was accomplished, and the notice has appeared in the Quebec *Official Gazette*.

The appellant, a minister of the Presbyterian Church in Canada in connection with the Church of Scotland, refused to concur in this fusion, and he petitioned for an injunction to prohibit the Board as now constituted to deal with the Temporalities Fund. The Court below has dissolved the injunction: hence this appeal.

The statement in Respondents' factum, "that the petitioner and the seven ministers who continue with him outside the said union, have no right to continue the said Presbyterian Church of Canada in connection with the Church of Scotland, and that in fact they are dissentients, voluntarily separated from the said charge," is calculated to mislead. Whatever the legal effect of the proceedings may be, whole congregations have voluntarily separated themselves 30 from the said Church, if the eight ministers have. But whether the non-conformists be 8 or 8,000 is of no importance, except for the purpose of sensation. The rights of the few are as sacred in the eye of the law as the rights of the many.

A theological argument originally complicated the issues in the case; but the learned Judge in the Court below very properly, I think, dismissed it from his consideration. If we were to admit such a line of discussion we might be called upon to decide whether "The Presbyterian Church in Canada in connection with the Church of Scotland" was or is an orthodox body. This mode of circumscribing the argument evidently wounds the sensibilities of the Respondents, who perhaps would be as much shocked at the idea of a majority vote absorbing their 40 new union into the Church of Rome, as the Rev. Mr. Dobie is at the metamorphosis which Respondents contend has now taken place. And therefore during the argument at the bar we were informed that the Church of Scotland had sanctioned or approved of the fusion in question. I only refer to this to show in what inextricable difficulties we should be involved if we were to allow ourselves to be decoyed from the legal question, to the consideration of questions, the interest of which cannot be over-estimated, but which are not of our competence.

I do not conceive I have the mission to pronounce as to whether the "theological standards" of the four Churches are identical or not, and perhaps I may be permitted to add that I do not regret not having to perform that duty. I take it we must recognize the *status* of each of these Churches, and also that they were separate and distinct bodies, however thin the partition may be which divided them, and we must also recognize the new body as one distinct from all the others.

As a fact, it is admitted that all the property and money of the Temporalities Fund is situated or invested in the Province of Quebec. The Respondents, 10 relying on sub-section 13 of section 92 B. N. A. Act, which gives legislative power to the Provincial Legislatures over "property and civil rights in the Province," contend that having full control over all property, the Legislature of Quebec has full power to deal with all property which may exist in the Province of Quebec, and consequently that it has the power to confiscate the funds of the Presbyterian body situate in the Province of Quebec, and present them to some one else, and that this has been done. On the other hand, Appellant contends that the Local Legislature has no right to incorporate any companies but those having provincial objects (Ib. sub-section 11); that this is tantamount to saying that the right to incorporate companies with other than local objects is exclusively 20 reserved to the Dominion Parliament (Sect. 91, B. N. A. Act); that the Board of management was an incorporation for other than provincial objects, and therefore that it could not have been created a corporate body by a local Act, and consequently that its act of incorporation cannot be altered or amended by any local Legislature.

I must confess that the sections upon which the contending parties rely appear to me to be irreconcilable by themselves. If the local power to legislate over property and civil rights in the Province is to be interpreted to mean over "all" property, &c., then the power of Parliament to incorporate is illusory. In practice it never has been contended that property means all property. Railway 30 companies incorporated by Parliament, for instance, hold and manage their property under Dominion laws, and such companies evict people from their private property in each Province under Dominion laws. No one will venture to affirm that a local Act could confiscate the property of a railway company incorporated by Parliament, or transfer it to another company or person. And so it has been decided in the case of *Bourgoin & The Q., M., O. & O. Railway Co.* by the Privy Council, (3rd Legal News, p. 185,) that a railway with all its appurtenances, and all the property, liabilities, rights and powers of the existing company, could not be conveyed to the Quebec Government, and, through it, to a company with a new title and a different organization, without legislative authority, and that if 40 the railway was a Federal railway, the Act authorizing the transfer must be an Act of the Parliament of Canada. Nor, by parity of reasoning, could the Local Legislature confiscate the surplus funds of a bank on the pretext that it was property in the Province. It is impossible to conceive more obvious limitations to the right to legislate as to property than these. Again, we have had two decisions limiting the sub-section in question. In the case of *Evans v. Hudon*, and *Browne, T.S.*, Mr. Justice Rainville held that a local Act was unconstitutional which authorized the seizure by process of law of the salaries of federal officers,

RECORD.

—
In the
Court of
Queen's
Bench.

No. 74.

Judges'
Reasons.

—
Mr. Justice
Ramsay.
(dissenting)
—continued.

RECORD. 22 L. C. J., p. 268 ; and the Court of Appeal in Ontario, in the case of Leprohon & The Corporation of Ottawa, 2 Tupper, p. 522, held, reversing the judgment of the Queen's Bench, 40 U. C. R. 478, that under the B. N. A. Act, 1867, a Provincial Legislature has no power to impose a tax upon the official income of an officer of the Dominion Government, or to confer such a power on the municipalities. These decisions can only be sustained on the ground that property in the sub-section in question does not include such property and civil rights as are necessary to the existence of a Dominion object, to copy the phraseology of the B. N. A. Act. It may, perhaps, be said that sec. 91, s. s. 8, B. N. A. Act, specially gives to the Federal Parliament the power of fixing the salaries ; but this does not seem to me to affect the question. After the salary has been fixed and is processed by the individual, it becomes property in the province. We are, therefore, obliged to sustain the judgment on some other general principle which limits the effect of s. s. 13, sec. 92 B. N. A. Act.

No. 74.
Judges'
Reasons.

Mr. Justice
Ramsay.
(dissenting)
—continued.

On the other hand we have a decision of Vice-Chancellor Blake, in the case of Cowan & Wright, 23 Grant, Ch. Rep., p. 616, upholding the constitutionality of the Ontario Act (38 Vic. cap. 75) except in so far as it attempted to deal with property in the Province of Quebec. This is, of course, a decision of the precise point before us, and therefore it becomes important to examine the grounds upon which it was rendered. It appears to me that it is undeniable that the local 20 Legislature, acting within the scope of its powers, has a right to legislate as absolute as the Dominion Parliament legislating within the scope of its powers. Indeed, this doctrine as to the respective powers of the Dominion and Local Legislatures seems to me to be almost the only one on which there has been entire unanimity of opinion. But when from this it is sought to glide to the conclusion that the words of section 92 are alone to be considered as defining the exclusive rights of the Local Legislatures, I think we arrive at a doctrine opposed to positive law, and to the authority not only of the Courts, but to the authority of practice.

There is a sort of floating notion that by the conjoint action of different 30 Legislatures, the incapacity of a Local Legislature to pass an Act may be in some sort extended. Section 15 of the 38 Vic., cap. 62 (Quebec), seems to have been added under the influence of such an idea. By it the Dominion and Local Legislatures are permitted to recognize and approve. I cannot understand anything more clear than this, that the Local Legislatures, by corresponding legislation cannot in any degree enlarge the scope of their powers. When the question is between the authority of Parliament and that of a Local Legislature, the forbearing to legislate in a particular direction by Parliament may leave the field of local legislation more unlimited. This is the only bearing I can conceive the case of the Union St. Jacques & Belisle,* can have on this case. What the Privy Council 40 held in that case was that a special Act for the relief of a corporate body did not fall within the meaning of "Bankruptcy and Insolvency" (B. N. A. Act, sect. 91, s. s. 21) and this more particularly as there was no Dominion Act with which it interfered. It is, therefore, dead against the pretension of Respondents in this case, for the legislation objected to upsets a Dominion Act, that is to say,

* 20 L. C. J. 29; 6 P. C. 31.

if corporations which have not alone provincial objects (provincial according to the meaning of the B. N. A. Act, *i. e.*, relating to one Province under the Act) created before Confederation, are under Dominion Laws. On this point there has never been a doubt. For instance, the Acts of incorporation of the G. T. Railway, an old Province of Canada incorporation, have been amended by Dominion Acts, never by local ones.

Another authority in support of the constitutionality of the Ontario Act has been mentioned by Mr. Todd in his very valuable volume on "Parliamentary Government in the British Colonies," (p. 355). This is, of course, an authority not to be despised, and if it had been given free from all bias by political considerations I should have considered it a very valuable opinion. But, without meaning to imply any sort of criticism as to the exercise of the discretion of the Federal Government in the disallowance of bills, I may say that we all know that the Federal Government is most unwilling to interfere in a too trenchant manner with local legislation, and where there is room for doubt as to the limits of the powers exercised, and where great popular interests are involved, they readily leave the question to the decision of the Courts. The report referred to by Mr. Todd, therefore, amounts to little more than this, that where part of an Act is evidently *ultra vires* and the rest not evidently so, the Federal Government will not interfere and disallow the bill. I have already said that the terms of section 92 of the B. N. A. Act do not alone decide as to the limit of the local legislative power. Those who drew the B. N. A. Act saw that, in spite of all precautions, it would be impossible so to define the exclusive powers as to avoid clashing. It was therefore enacted at the end of section 91, as a rule of interpretation, that "any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces." This appears to me to be decisive in the present case, and I feel myself compelled to come to the conclusion that an Act which disposes of the property of a corporation created by a Federal law is unconstitutional.

There is another way of considering the matter, which appears to me to bring forward this view still more clearly. If the Presbyterian body all over Canada wanted an Act of incorporation to enable them to manage their property, no local legislation would suffice. This brings me to still another consideration. The Ontario Act and the 62 cap. 38 Vic. (Quebec) are Acts of incorporation to all intents and purposes. It is true they do not, in so many words, declare certain persons to be a body corporate, but each gives to a certain organization corporate powers; each creates a fictitious person able to receive and hold by gift and devise. It will scarcely be pretended that these two Acts have created but one body corporate. They have evidently created two corporations, each of which deals with Presbyterians all over Canada. Now, let us apply the rule of *ultra vires* laid down in the minute of Council mentioned by Mr. Todd. It was there said the Act of Ontario was *ultra vires* in so far as it dealt with property in the Province of Quebec. Is it not by parity of reasoning also *ultra vires* in so far as it deals with civil rights outside the Province? If so, then cap. 62 is equally

RECORD.

—
In the
Court of
Queen's
Bench.

No. 74.
Judges'
Reasons.

—
Mr. Justice
Ramsay.
(dissenting)
—continued.

RECORD.

—
In the
Court of
Queen's
Bench.

—
No. 74.
Judges'
Reasons.

—
Mr. Justice
Ramsay.
(dissenting)
—continued.

void so far. And what is the result? The Ontario Act not having been disallowed, exists so far as it can be applied within the local jurisdiction—that is, it has incorporated the Presbyterians in Ontario, under the name of “The Presbyterian Church in Canada.” The Quebec statute has incorporated the Presbyterians of Quebec under the name of “The Presbyterian Church in Canada,” “or any other name the said church may adopt,” and it is in favour of this unnamed Corporation, and not in favour of the Ontario body, it has confiscated the property of “The Presbyterian Church of Canada in connection with the Church of Scotland.” This mode of executive morselling would have the effect of producing a result which no Legislature contemplated. If a donor directs that £5 apiece be given 10 to ten persons, it may logically be assumed that to give £1 apiece to each is partly to fulfil his directions; but to give the whole fifty pounds to one of the ten persons, is to contravene his directions. Therefore, to let a law stand which is partly *ultra vires* and partly constitutional, may be the most perfect mode of defeating the legislative will. I therefore say that a law which is *ultra vires* in part may thereby be *ultra vires* in whole, and so it should be construed, at all events when it appears that the object of the Act is not attained by a partial execution. Take for instance an act of incorporation of a railway company from Quebec to Toronto. Could that be interpreted as an act of incorporation from Quebec to the Province Line? Unquestionably it could not be. But I shall be 20 told “there is a special exception for that” (sect. 92, s. s. 10, a). The exception is not, however, more formal than the exception from incorporation by local Act of companies having other than provincial objects. I therefore think that the Act purporting to create the body to be benefitted by the transfer of the temporalities fund is *ultra vires* in whole.

There is another view of this case which depends on considerations entirely different from those which have influenced my opinion in one sense, or that of two of my colleagues in another sense. As that opinion has the effect of turning the scales, so far as this Court goes, in favour of Respondents, it may not be out of place to notice it. One of the learned Judges thinks, I understand, that these 30 Acts are *ultra vires*, and particularly the Act affecting the incorporation of the Temporalities Board; but that these Presbyterian bodies being voluntary associations they had a right, without any legislation, to form themselves into one body, that by the appellant's refusal to join the new body, he voluntarily excluded himself from the old, and that he has therefore no interest in the Temporalities Fund, and consequently no interest to question the illegal character of the Board. I confess to have experienced some slight feeling of consternation on first hearing this mode of dealing with the case relied on. For an instant I wondered if all my previous examination of the case had been misdirected. A little reflection will, however, I think, dispose of this opinion. The pertinacious 40 use of the words “voluntary association” in this case, and in the case of Johnston and The St. Andrew's Church,* induces me to think that some inexplicable meaning is commonly attached to the expression. If it be supposed that a Pres-

*1 Supreme Ct., Rep. 235; 1 Legal News, 13.

byterian Church is more of a voluntary association than an Episcopalian one, I am at a loss to understand the distinction. It seems to me to be a particularly unfortunate expression for a church association, for if there be any association a man is not compelled by law to enter, which is more involuntary than another, it is the association with those of the same religious belief. But I must take it that the expression "voluntary association" means an unincorporated company, and taking it as such I shall deal with the argument. I admit there is no need of legislation to enable any number of persons to associate themselves together for religious or other purposes, and even to adopt a name as a designation. So the four Presbyterian churches or any of their number, whether a majority or a minority, had a perfect right to form an association and call themselves "The Presbyterian Church in Canada," without the intervention or permission of any Legislature; but such members had no right to take the trust funds accidentally in their hands, and make them over to another body; nor could their adherence to a new body annihilate the old one, and so deprive its remaining members of their interest in such funds. It is evident from the ruling in Bourgoins case, already cited, that incorporated companies could not do so, and I fancy unincorporated associations would not have greater power. But if there be any distinction there, then the temporalities is held under the authority of an Act of the Legislature, which by the reasoning under consideration cannot be touched by local legislation. If such a pretension as that I now combat were tenable, then a majority of the members of the Presbyterian Church of Canada in connection with the Church of Scotland could have voted a distribution of the funds amongst themselves, and in this way have defeated the whole objects of the donors.

There is an argument which I have omitted to mention, probably because the answer readily suggests itself. It is said that the Legislature of Quebec had, previous to the Act in question, dealt with the Temporalities Fund, and that the Appellant had acquiesced in the action of the Legislature. I do not think that one unconstitutional Act can justify its repetition, or that the acquiescence of the Rev. Mr. Dobie can appreciably extend the provisions of an Act of the Imperial Parliament. In a case of *Vautrin and Niagara Mutual Insurance Co.* the question was raised as to whether an Act of Ontario could set aside an old Province of Canada Act affecting both Upper and Lower Canada. We decided the case on another question altogether, and so no decision was given on the point. I may, however, say that I don't think the question raised in the present suit was really involved in that case. The object of the original incorporation was purely local and always remained so. Nor am I prepared to admit the doctrine that doubt gives rise to a presumption in favour of the action of the Legislature, which has been advanced by the learned Judge in the Court below. It seems to me that such a doctrine is not founded on any logical basis, and that its adoption would give rise to great confusion. In law there is doubt of the fact, and a variety of rules intimate how in such a case the Judge should decide; but when the Judge comes to give his decision in matter of law his doubts are at an end, however great may have been his intellectual difficulty in arriving at a conclusion. I can easily understand that a consistent and uniform interpretation of the Confederation Act in one sense as to the distribution of legislative power,

RECORD.

*In the
Court of
Queen's
Bench.*

No. 74.
Judges'
Reasons.

Mr. Justice
Ramsay,
(dissenting)
—continued.

RECORD. may come to form a potent judicial reason for interpreting the Act in that sense; but to say on each occasion that the authority of the Legislature is impugned, that "it is but a decent respect due to the wisdom, the integrity and the patriotism of the legislative body by which any law is passed, to presume in favour of its validity until its violation of the constitution is proved beyond all reasonable doubt," appears to me to be slightly declamatory. If we allowed ourselves to be

No. 74.

Judges' Reasons.

Mr. Justice Ramsay.
(dissenting)
—continued.

guided by such considerations, we should be abdicating our judicial functions in a manner that would indicate respect for the integrity of the Legislature, rather than for our own body. But to characterize the question before us, as one even of very serious difficulty, seems to me to be going a very long way. I would 10 therefore reverse, and Mr. Justice Tessier, I understand, concurs in the conclusion at which I have arrived.

T. K. RAMSAY,
J. Q. B.

se;
ed,
ot-
of
ble
be
n a
ner
en
uld 10
ion